
5 June 1998

CIRCULAR

**THE
FURTHER
EDUCATION
FUNDING
COUNCIL**

**THE REVISED FINANCIAL
MEMORANDUM**

Cheylesmore House
Quinton Road
Coventry CV1 2WT

To _____ Principals of colleges
Chairmen of governors

Circular type _____ Consultation

Summary _____ Consultation on draft of the revised
financial memorandum between
the Council and colleges.
Responses by 26 June 1998

Reference number: 98/18

Enquiries:
Richard Allanach
Assistant director: finance
01203 863091

98/18

THE REVISED FINANCIAL MEMORANDUM

INTRODUCTION

1 As part of the process for ensuring the proper use of public funds the Council has a financial memorandum with each college it funds. This memorandum is in two parts. The first part sets out the general terms and conditions under which the Council funds colleges. The second part is issued annually and is specific to each college. It includes notification of the main allocation payable to the college. The first part of the current financial memorandum with colleges is set out in Circular 93/23. The Council is now consulting colleges about a proposed replacement of that part of the financial memorandum.

2 In the context of the separate and specific responsibilities of governors and principals, a copy of this circular is being sent to each chairman of governors and to each principal.

BACKGROUND

3 The Council's own financial memorandum with the Department for Education and Employment (DfEE) requires it to 'make a financial memorandum with each institution they fund for the purposes of regulating their relationship on financial and related matters, setting out the terms and conditions on which payments of grant will be made by the Council to the institution.'

4 As reported in *Council News* No. 38, the Council's financial memorandum with the DfEE was revised in April 1997. Following this revision, the Council set up a working party to advise it on changes to its own financial memorandum with colleges. The members of the working party are listed in annex A. The Council considered the advice of the working party together with other representations at its meeting in March 1998. The Council agreed that the sector should be consulted on a revised financial memorandum.

SPIRIT OF THE PROPOSED CHANGES

5 It is intended that a revised financial memorandum should reflect a picture of mutual respect between the Council and colleges. The proposed financial memorandum places more obligations on the Council and is shorter and simpler than the version it is intended to replace.

MAIN POINTS

6 The text of the proposed revised financial memorandum is set out in annex B. The main points to note in the revised financial memorandum are:

- a proposed simplification of the process for seeking the Council's consent for major building projects
- a proposed extension of the general borrowing consent given by the Council to colleges
- a proposed protection for the position of 'whistle-blowers'.

Consent for Major Building Projects

7 Members of the working party advised that colleges considered there was little practical difference between consulting the Council about building projects which cost more than £100,000 (which is a requirement of paragraph 25 of the existing financial memorandum) and seeking the Council's consent for significant building projects (which is a requirement of paragraph 26 of the existing financial memorandum). Accordingly, the Council proposes to abolish the requirement for colleges to consult it. In addition it is proposed that colleges should only be required to seek the Council's consent for projects which cost more than £1,000,000 or 5 per cent of annual income. This reduction of the administrative burden on colleges is moderated by a proposed requirement for colleges to have regard to the guidance issued by the Council on estates procedures.

General Borrowing Consent

8 Section 19(5) of the *Further and Higher Education Act 1992* requires further education corporations to obtain the consent of the Council to any secured or unsecured borrowing. Under the terms of the existing financial memorandum, the Council has given a general consent for colleges to borrow, on an unsecured basis, up to 5 per cent of annual income. The Council proposes that this general power to borrow for working capital purposes should now be matched by a general power to borrow on a secured basis to implement small-scale building projects.

Protection for Whistle-blowers

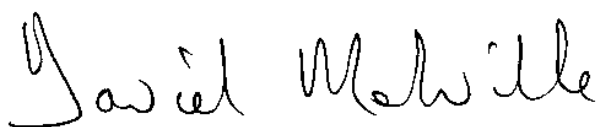
9 In his report *St Philips Roman Catholic Sixth Form College* (1994), Sir John Caines suggested that the Council give suitable advice to principals about the way in which they should conduct their role to avoid the kind of consequences identified in his report. Paragraph 16 of the proposed financial memorandum gives guidance to principals on the actions they should take when governors are considering an action or policy which the principal believes is incompatible with the financial memorandum. The Council proposes that following this guidance would not be grounds for governors to take disciplinary action or to suspend a principal.

10 A similar matter was considered by the authors of *College Governance: A guide for clerks* (1996) which sets out the Council's advice on the manner in which clerks should discharge their duties. This publication provides two mechanisms by which a situation where a clerk has concerns about the governance might be resolved. Colleges were recommended to consider their approach and decide which mechanism they preferred. The Council now proposes to require colleges to choose one of these two mechanisms. The Council intends to restate its expectation that action within the specified procedure should not provide grounds for disciplinary action or the suspension of a clerk.

CONSULTATION

11 Responses to the proposed revised financial memorandum are requested by 26 June 1998. It would help the Council's staff in the task of analysis if correspondents would use the format set out in annex C for their responses. Responses should be sent to:

Rajni Chopra
Finance team
Further Education Funding Council
Cheylesmore House
Quinton Road
Coventry CV1 2WT.



MEMBERSHIP OF THE WORKING PARTY

Chris Webb (chairman)	Principal, Handsworth College
Richard Allanach	Assistant director: finance, FEFC
Mike Blagden	Principal, Southgate College
Peter Granville	Finance branch, DfEE
Pat Hay	Deputy principal, Harlow College
Phil Head	Assistant director: education and institutions, FEFC
Claire Higgs	Formerly director of finance, Sandwell College
Robin Jones	Director of administration and management services, Waltham Forest College
Peter Lennard	Director of finance, Soundwell College
Dave Linnell	Principal, John Leggott Sixth Form College
Kevin O'Hara	Director of finance, The Sheffield College
James Scrimshaw	Chairman of governors, Barking College

DRAFT FINANCIAL MEMORANDUM

Comments: Text which is not intended to form part of the financial memorandum is included in this font.

INTRODUCTION

1 This memorandum sets out the terms and conditions of the agreement under which the Council provides funds to Colleges. It provides information on the framework of relationships between Colleges and the Council.

Definitions

2 For the purpose of this memorandum:

- ‘Act’ means the *Further and Higher Education Act 1992*
- ‘Board’ means the further education corporation or, in the case of a unincorporated institution, the person or persons, conducting the College and in receipt of funds from the Council
- ‘Chief Executive’ means the chief executive or principal appointed by the board of a further education corporation or the equivalent individual in the case of a designated institution
- ‘Clerk’ means the person appointed by the Board to that position or in the case of a designated institution the person appointed by the governing body to fulfil a similar duty
- ‘College’ means the educational institution conducted by the Board and named in part 2 of this memorandum
- ‘Council’ means the Further Education Funding Council for England
- ‘DfEE’ means the Department for Education and Employment
- ‘Exchequer funds’ means government grant or grant-in-aid, including grant paid by the Council and grant paid by the former Department of Education. ‘Exchequer funds’ does not include funds provided by a local authority
- ‘Secretary of state’ means the secretary of state for education and employment

- ‘Senior Post-holders’ mean the chief executive and holders of the other senior posts whom the board have selected for the purposes of the articles of government of the college relating to the appointment and promotion of staff.

Comment: On the advice of the working party the terms ‘principal’ and ‘board of governors’ have been replaced respectively by the modern terminology ‘chief executive’ and ‘board’.

3 The financial memorandum is in two parts. The first part sets out the general terms and conditions under which the Council funds boards. The second part is specific to each College and will include:

- the annual notification of the main allocation payable to the Board
- the educational provision which the College has undertaken to deliver
- individual limits on borrowing and property transactions where these are lower than those provided for in paragraphs 25, 29 and 30
- any specific conditions which relate to the financial year
- any specific conditions which relate to the particular College.

This document is the first part of the financial memorandum. Each College will receive individual and annual notification of the second part of the financial memorandum.

Comment: This formulation is longer than the original and provides more information on the likely contents of the second part of the financial memorandum.

GENERAL

4 The financial memorandum does not over-ride the duties and powers given to the Council and to Boards by the Act.

Comment: A similar paragraph is in the current financial memorandum. The Council’s legal advice is that this paragraph does not add or detract from the duties and powers of colleges. By means of this circular colleges are being consulted on whether they wish to retain this paragraph.

5 The accredited status of the College shall have no effect on the operation of the financial memorandum.

Comment: This is the conclusion of the working party and of the Council. The working party have advised the Council that this issue should be reconsidered as part of the next revision of the financial memorandum. By means of this circular colleges are being consulted on whether they wish to see a specific reference to the accredited status of colleges in the financial memorandum.

RESPONSIBILITIES

Council

6 The Council intends that in all its dealings with Colleges it should operate fairly and as openly as possible.

Comment: This is a new paragraph. As part of the framework of providing a secure environment for public funds, the financial memorandum imposes certain governance and management constraints on colleges. The working party considered that in a situation of mutual respect this should be mirrored by setting certain constraints on the Council. The wording of this paragraph is a précis of the Council's Code of Corporate Responsibility and takes account of external, often legal, constraints on the Council.

Council's Accounting Officer

7 As accounting officer the chief officer of the Council is responsible and accountable to Parliament for ensuring that the uses to which the Council puts its funds are consistent with the purposes for which the funds were given and comply with the conditions attached to them. The chief officer of the Council is responsible for the regularity and propriety of expenditure from those funds and for securing the best possible value for money from them.

8 Funds paid to Boards are subject to the terms and conditions determined by the Council. These terms and conditions include those in this financial memorandum. The chief officer of the Council is required to monitor the College's compliance with any terms and conditions attached to its funding. She or he must be satisfied that each Board has appropriate arrangements for sound financial management, achieving value for money and

accounting and that the uses to which the Council's payments are put are consistent with the purposes for which they have been given.

College

9 The respective responsibilities of the Board, the Chief Executive, and Clerk are set out in the College's instruments and articles of government. The role of the Board is to set objectives for the College, to determine the limits on the Chief Executive's discretion to act, to monitor the performance of the College, the Chief Executive and themselves and to be accountable to the College's stakeholders. The role of the Chief Executive is to manage the College towards the objectives set by the governors and within the limits they have prescribed. As accounting officer the Chief Executive is responsible for the College's application of public funds. Further guidance is given in the Council's publications: *Guide for College Governors; College Governance: A guide for clerks* and the *Notes for Governing Bodies* series.

Comment: This material draws on the Carver model of governance.

The Board

10 The Board can only use funds from the Council in accordance with the Act. The Board must use funds from the Council only in accordance with this memorandum and any other conditions which the Council may from time to time prescribe.

11 The responsibilities of the Board include:

- determining the educational character and mission of the College and for oversight of its activities
- ensuring the solvency of the College and the safeguarding of the College's assets
- appointing, grading, suspending, dismissing and determining the pay and conditions of service of Senior Post-holders
- setting a framework for pay and conditions of service of all other staff
- ensuring that the financial, planning and other management controls, including controls against fraud and theft, applied by the college are appropriate and sufficient to safeguard public funds

- approving the appointment of external auditors and an internal audit service
- securing the efficient, economical and effective management of all the College's resources and expenditure, capital assets and equipment, and staff, so that the investment in public funds in the College is not put at risk. Guidance is given in the appendix on how to apply this principle to terminating contracts of employment by agreement
- ensuring that appropriate financial considerations are taken into account at all stages in reaching decisions and in their execution
- planning and conducting its financial and academic affairs so that its total income is not less than sufficient, taking one year with another, to meet its total expenditure
- making appropriate arrangements to appoint a Clerk with the necessary expertise to fulfil the duties of the post
- approving a budget before the start of each financial year.

Comment: On the advice of the working party this section brings together the requirements of the financial memorandum and the articles of government to provide ease of reference.

12 The Board shall establish:

- an audit committee
- a remuneration committee
- a committee or committees to advise on financial matters and employment policy.

Boards may also establish other committees. The Board shall periodically review the membership and terms of reference of its committees. In determining the terms of reference of these committees the Board shall not delegate responsibility for determining the educational character and mission of the College, approving the budget, ensuring the solvency of the College or the appointment or dismissal of Senior Post-holders.

Comment: This revised wording meets a common criticism of the current financial memorandum, that is that it does not bring together all the committees which a board is required to have. This paragraph may need to be revised in the light of the government's consultation paper 'Accountability in Further Education'.

Chief Executive

13 Within this framework the Council and the Board will require the Chief Executive to take personal responsibility, which may not be delegated, for ensuring the proper and effective operation of the controls referred to in paragraph 11 above, and for giving effect to the Board's policies for securing the efficient, economical and effective management of all the College's income, assets and expenditure.

14 The responsibilities of the Chief Executive include:

- making proposals to the Board about the educational character and mission of the College and for implementing the decisions of the Board
- the organisation, direction and management of the College and the leadership of its staff
- preparing a budget for consideration and approval by the Board and for managing the College within the budget approved by the Board
- the maintenance of student discipline.

Comment: These responsibilities are extracted from the articles to provide ease of reference — hence the reference to the maintenance of student discipline which would otherwise be an unlikely candidate for inclusion in a financial memorandum.

15 The Chief Executive shall be responsible for ensuring that funds from the Council are used only for the purpose for which they are given and in accordance with any terms and conditions attached to them. These terms and conditions include those set out in the financial memorandum. As accounting officer, the Chief Executive may be required to appear before the Committee of Public Accounts, alongside the chief officer of the Council, on matters relating to the funds paid by the Council to the College and the use made by the College of such funds. The Chief Executive has a duty to report to the Council should the Board adopt a policy or commission an action which is incompatible with the terms of this memorandum or which would infringe the requirements of propriety or regularity.

Comment: A specific reference to the college's accounting officer is included for the first time in this paragraph.

16 The Chief Executive is responsible for advising the Board in writing if any action or policy under consideration by them is incompatible with the terms of this memorandum or would infringe the requirements of propriety or regularity. The report should include a reference to the Chief Executive's duty to report to the Council should the board seek to over-rule his or her advice. Where the Board determines to proceed despite the advice of the Chief Executive the Chief Executive should consider the reasons the Board have given for their decision. If after considering the reasons given by the Board the Chief Executive still considers that they could not defend such a policy or action then they should advise the chief officer of the Council in writing of the situation at their College. The Council would not consider the provision of such a written report to the Board or the notification of the Council as grounds to take disciplinary action or suspend a Chief Executive.

Comment: The main text follows the responsibilities of an accounting officer as set out in 'Government Accounting'. The last sentence is for the protection of the chief executive.

The Clerk

17 The Clerk is responsible for administrative support for the Board's work, for advising on proper procedure and for intervening when they consider that the Board is acting inappropriately or beyond its powers. Guidance on these matters is given in *College Governance: A guide for clerks*. Each Board should specify the procedures they would expect the Clerk and the Board to follow if there were difficulties in this area. The Council would not consider that action within the specified procedures should provide grounds for disciplinary action or the suspension of the Clerk.

Comment: This is a new paragraph which reflects the importance of the clerk's role in ensuring good governance. Like the chief executive the clerk is also to be provided with protection.

ALLOCATION OF FUNDS

18 The amount of funds to be paid to the Board in any year will be decided by the Council after considering the activities to which they will be applied, and taking account of other competing demands on resources. The payment of funds will be subject to such terms and conditions as the Council may impose, including those set out in this memorandum.

Comment: Two old paragraphs which reflected the now out-of-date division of funds into revenue and capital have been withdrawn.

VIREMENT

19 The board shall use any funds earmarked by the Council solely for the purposes for which they have been earmarked. The Board may apply its main allocation to capital purposes.

Comment: There is some simplification here reflecting Parliament's abandonment of the distinction between revenue and capital funds.

The old financial memorandum had some wording which reflected section 6(2) of the Act. This section of the Act was intended to encourage colleges to secure funds from non-Council sources and steers the Council away from penalising colleges which are successful in this area. An attempt was made to find a positive form of words which expressed these ideas for the new financial memorandum. This attempt proved fruitless and the working party concluded that the financial memorandum could be simplified by removing the reference to non-Council income. The statutory protection afforded to colleges by section 6(2) remains.

PAYMENT OF FUNDS

20 The Council will explain to the College the basis on which any funds are to be allocated. It will send to the College as soon as possible in advance of the financial year a statement of the main allocation awarded for the year. This notification will normally be issued by [date].

Comment: The notification to be provided by the Council is another obligation placed on the Council to balance the obligations of colleges.

21 The Council will make payments to the Board in monthly instalments in accordance with a funding profile for the whole financial year. The profile will be constructed to take account of expected need within the further education sector as a whole. Instalments will normally be paid through the Banks Automated Clearing System Ltd. The Council intends to provide Colleges with a notification of their monthly payment at the beginning of each month.

Comment: Note the implied change in working practice here. Payments for colleges will now be prepared two to three weeks before the due date. This has the advantage of giving colleges advance notice of the funding they will receive, which is of particular importance when funds are being deducted, for example as a result of the college's non-achievement of agreed funding levels. It has the disadvantage that college payments will no longer reflect the latest information available about the college.

22 The Council may also make exceptional *ad hoc* payments to the Board between monthly instalments. Such payments will only be made on written application from the College, will not be made in advance of the College's need to make disbursements and will not be additional to the sums allocated to the Board.

23 In addition to the main allocation the Council may also make allocations for specific purposes, for example access funds.

ACQUISITION AND DISPOSAL OF LAND OR BUILDINGS

24 The Board should manage and develop its estate with regard to the guidance issued from time to time by the Council on estate procedures including strategic estate and equipment management, option and investment appraisal, the affordability of the project and private finance. The Board should also:

- keep its holdings of land and buildings under review with the objective of rationalising and disposing of those which it considers in light of its estate strategy to be no longer needed
- maintain its estate in accordance with its accommodation strategy.

Comment: The consult option is deleted.

25 The Council requires the Board to seek its consent about land and buildings transactions which involve commitments of more than £1,000,000 or 5 per cent of the college's annual revenue whichever is the lower. Where the transaction is a disposal or the renting or leasing of property to a third party the college should seek to secure the best obtainable value for money. The Council intends to respond promptly to requests for consent under this paragraph.

Comment: This is a simplification of the current paragraph 26. The working party's advice is that the Council should no longer distinguish between the funding source of property involved in the transaction.

26 Where the College is proposing to dispose of or lease or rent, land and buildings which have been acquired by Exchequer funds the Council may require the College to surrender some or all of the proceeds.

27 The Council would normally expect Colleges to apply the proceeds of asset sales to investment in fixed assets. Colleges should seek independent professional advice when disposing of land and buildings.

Comment: This is a guiding principle. The Council would take account of this paragraph where it was considering whether to give its consent under paragraph 26. This would be a continuation of existing practice.

BORROWING AND LEASING

28 Save as provided for in paragraphs 29 and 30 and any special conditions the Council may include in the second part of the financial memorandum, the Board must seek the prior written consent of the Council for any secured or unsecured borrowing by itself or its subsidiaries.

Comment: Subsidiaries are included in the Council's new financial memorandum with the DfEE.

29 The Council gives consent for the Board to borrow up to 5 per cent of its annual revenue on an unsecured basis.

30 The Council gives consent for the Board to borrow up to £1,000,000 or 5 per cent of its annual revenue, whichever is the lesser, on a secured basis in order to finance the construction or purchase of buildings provided that only the buildings so purchased or constructed are offered as security.

31 Leasing of freehold and leasehold land and buildings from a third party is subject to the procedures set out in paragraph 25 above.

Comment: This both simplifies and extends the permissions provided in the old financial memorandum. For certain colleges within financial health category C, where further borrowing is likely to reduce the financial viability of the college, the Council would wish to reduce the discretion offered in paragraphs 30 and 31.

ACCOUNTS AND FINANCIAL MANAGEMENT

32 The College shall keep proper accounts and accounting records and shall prepare in respect of each financial year a statement of accounts. The College shall provide the Council with audited accounts for the financial year no later than five months after the year end. The accounts shall be signed by the Chief Executive and by the chairman or one other member of the Board as appointed for this purpose. The College shall make arrangements to make copies of the accounts publicly available.

Comment: There was discussion in the working party and its working groups on the timescale to be set for colleges to provide accounts. On the one hand the working party wanted to set an early date for the provision of accounts in order that financial problems should not be concealed. On the other hand the working party considered the merits of delaying the return of college accounts until after the final external audit of the college's student activity return. The working party was advised that this would not lead to a reduction in external audit fees and that accounting statements are based on a combination of facts and estimates. The working party also considered the scheduling of board meetings during the autumn term. On balance the working party concluded that the reporting timetable should be aligned with that adopted by HEFCE and a five-month period allowed for the preparation, auditing and approval of financial statements.

33 The Council shall, after consulting Colleges, specify its requirements as to the information to be contained in the accounts, the manner in which they are to be presented and the methods and principles according to which they are to be prepared.

34 The College should notify the Council in writing if at any time there is a significant deterioration in its financial position.

Comment: This is a new requirement which codifies existing good practice.

35 Where the Council has concluded that there is a risk to the College's liquidity, service delivery or asset base it may require the College to put in place a recovery plan or a risk reduction plan.

Comment: This simplifies paragraph 39 of the old financial memorandum which placed too much reliance on the calculation of accounting values which were becoming progressively less meaningful

as indicators of financial health as the sector matured. The new paragraph will give the Council a clearer power to assist colleges in need of exceptional support and guidance.

The concept of waiving the financial memorandum is withdrawn.

EXTERNAL INSTITUTIONS

36 The College is required to seek from the external auditors of those institutions to which the College has given financial support under section 6(5) of the Act, an audit certificate stating whether in the opinion of the external auditors the funds have been applied for the purposes intended. This certificate shall be forwarded to the Council within eight months of the financial year end.

AUDIT

37 The College shall arrange external and internal audit in accordance with guidance from the Council. This guidance is provided by the *Audit Code of Practice* and in succeeding publications and supplementary guidance.

38 The Council may undertake examination of the College's internal financial and management controls and may recommend improvements. These examinations will normally take place as part of the cycle of college inspections. DfEE auditors may accompany the Council's staff during these examinations. The Council may also carry out reviews designed to improve economy, efficiency and effectiveness in the management or operation of the College.

39 The books and records of the College will be open to inspection by the Council and by the Comptroller and Auditor General. The Comptroller and Auditor General may also carry out value-for-money studies of the College's use of resources.

Comment: The old financial memorandum reminded colleges to take out insurance at this point. The working party considered this to be spurious advice.

CONTINGENT LIABILITIES

40 The college shall not give any guarantees, letters of comfort, or indemnities incurring contingent liabilities other than in the normal course of commercial business dealings.

INFORMATION

41 The College shall provide to the Council information concerning its finances, staffing, students and programmes. This will normally include:

- the College's annual financial statements and financial record
- the College's strategic plan and strategic plan updates, together with the financial forecast which supports the plan
- where appropriate a mid-year financial forecast update
- the individual student record
- the staff individual record.

Colleges will also be required to provide periodic information on their accommodation strategies. Additional information, including a self-assessment, will be required before a college inspection and a requirement to provide additional information is likely to be part of the terms and conditions of earmarked grants. Colleges will normally have discretion whether or not to apply for earmarked grants. Where additional information is sought in data collections it is intended that this will normally be announced before the start of the relevant financial year. Where the Council intends to request special additional information from specific colleges it will normally consider whether it should make a payment to the college to reduce the financial burden of providing the additional information.

Comment: This is another section which attempts to balance the Council's requirements and the college's requirements. It also draws on Nolan's 'Local Public Spending Bodies'.

The requirement to produce a mid-year financial forecast may be withdrawn from the strongest colleges.

42 Colleges shall report all significant (as defined in the *Audit Code of Practice*) cases of fraud to the Council.

Comment: This is a new requirement which follows on from the Council's own financial memorandum with the DfEE.

REQUIREMENT TO INFORM THE COUNCIL

Comment: A requirement to notify the Council of major systems changes has been deleted. It was more relevant whilst the sector was developing.

43 The college shall notify the chief officer of the Council in writing of any of the following:

- the intention to carry forward a major change in the nature or location of the College
- the vacating and the filling of the following positions:
 - chairman of the Board
 - Chief Executive
 - Clerk
- when the Chief Executive will be absent from the College for an extended period the name of the person who be discharging the Chief Executive's responsibilities during the absence.

Comment: A major simplification and reduction. For its own purposes the Council may still wish to know who is the chairman of the audit committee and so forth but this should not be maintained as a financial memorandum requirement.

PENALTIES

44 Where a Board fails to comply with any of these conditions of funding the Council may take further action including withdrawing funds from the College.

INTERPRETATION

45 Questions arising on the interpretation of any statement in this memorandum shall be resolved by the Council after consultation with the College.

EFFECTIVE DATE

46 The arrangements shall take effect from [1 August 1998]

Comment: This is a net reduction of nine paragraphs.

EXPLANATORY NOTES

Terminating Contracts of Employment by Agreement

Principles

1 The principles set out in the financial memorandum apply when terminating contracts of employment by agreement including premature retirement. Colleges should be able to demonstrate that payments in respect of termination are regular, secure value for money and are affordable.

2 Colleges should avoid spending public funds on settlements where disciplinary action would have been more appropriate.

3 Normally public funds should only be used to meet contractual obligations and items such as pension enhancements within the limits set out in the relevant pension scheme rules. Exceptions should be justified by explicit and quantified reference to value for money.

4 Confidentiality clauses are generally contrary to the public interest.

Practice

5 Colleges should establish a framework and a procedure for determining settlements. In determining individual settlements colleges should take appropriate professional advice.

6 Appropriate records of each stage of negotiations should be retained. The cost of settlements must be declared in the college's financial statements.

7 In the case of senior post-holders, boards should consider establishing a special committee to oversee negotiations. The outcome of negotiations should be reported to the board and all settlements should be brought to the attention of the college's external auditors. Once it has established a framework for determining a settlement with a senior post-holder, the board may delegate to the special committee the power to reach a settlement.

Comment: *The Association of Colleges, Association of College Management and the Association of Principals have been consulted about this section.*

Secured Borrowing

For estates

8 In considering applications for secured borrowing consent the Council will have regard to:

- the governors' approval of the project
- planning and other relevant permission
- the economics of the project. Projects would normally be expected to generate at least a 6 per cent real rate of return
- whether the college has considered a wide enough range of options
- the financial viability of the college. Colleges would normally be expected to demonstrate that when the project is operational the college can run at a surplus and make sufficient cash from operations to meet its debt charges
- the terms on which it is proposed to borrow
- whether appropriate private public partnerships have been considered.

9 The Council would normally expect to respond to an application for secured borrowing consent within 30 working days of being provided with copies of the minute of the governing body approving the borrowing, evidence of any necessary approvals, investment and option appraisals carried out according to the standards set by Her Majesty's Treasury, a financial forecast which shows the impact of the project, details of the procurement process and a copy of the offer letter from the proposed lender.

For solvency

10 The Council would expect to take into account the likelihood that the college would be able to repay the borrowing, the financial controls in place at the college, the capacity of the governors and management team, the steps the college was making to improve its financial position and the development of the college's recovery plan.

Public access to college accounts

11 Under the terms of the *Charities Act 1993* the governors are required to supply any person with a copy of the college's most recent accounts within two months of a request. The governors may require a reasonable fee. It is expected that colleges will go beyond this minimum requirement, for example by providing copies of their accounts to local libraries and allowing members of the public to inspect their statement of accounts during normal working hours.

Converting rents and leases into committed sums

12 For the purpose of paragraph 25, the commitment is deemed to be a sum of 10 times the amount of the annual rent, save where the property is subject to a lease for a fixed term of which fewer than 10 years remain. In which case, in order to calculate the deemed capital sum, the annual rent is to be multiplied by a factor equal to the number of years of the term remaining.

Boards and colleges

13 The DfEE advises that further education corporations and the boards of governors which run them are for legal purposes one and the same thing. The *Further and Higher Education Act 1992* permits the Council to fund boards. Boards then run educational institutions – that is to say 'colleges'. Thus in the financial memorandum the term 'Board' is used for legal purposes on a number of occasions where it might be more natural to refer to 'colleges'. For example, the memorandum refers to payments being made to Boards.

Annual revenue

14 In the case of any dispute the annual revenue of a college shall be taken to be the turnover declared in its most recent audited financial statements less any payments made to the college under section 6(5) of the *Further and Higher Education Act 1992* and less any release of capital grant included in turnover.

RESPONSES TO CONSULTATION

(Reference Circular 98/18)

Please photocopy, complete and return this form to Rajni Chopra at the Council's Coventry office no later than 26 June 1998.

THE FURTHER EDUCATION FUNDING COUNCIL

Institution name

Contact name (*please print*)

Signature

Telephone

Cheylesmore House
Quinton Road
Coventry CV1 2WT

Telephone 01203 863000
Fax 01203 863100

<i>Proposed aim</i>	<i>Agree</i>	<i>Disagree</i>	<i>Comments</i>
1 Do you support the replacement of the terms 'principal' and 'board of governors' with 'chief executive' and 'board' (Paragraph 2 of the proposed revised financial memorandum and subsequently throughout the document)?	<input type="checkbox"/>	<input type="checkbox"/>	
2 Do you wish to see the retention of paragraph 4?	<input type="checkbox"/>	<input type="checkbox"/>	
3 Do you wish to see the possible accredited status of the college referred to in the financial memorandum (paragraph 5)?	<input type="checkbox"/>	<input type="checkbox"/>	
4 Do you support the inclusion of a reference to the Council's obligations under its <i>Code of Corporate Responsibility</i> (paragraph 6)?	<input type="checkbox"/>	<input type="checkbox"/>	
5 Do you support the inclusion of a general paragraph setting out the general responsibilities of the Board, Chief Executive and Clerk (paragraph 9)?	<input type="checkbox"/>	<input type="checkbox"/>	

<i>Proposed aim</i>	<i>Agree</i>	<i>Disagree</i>	<i>Comments</i>
6 If a general paragraph is included would you wish to see it included in the financial memorandum or as part of the supporting notes (paragraph 9)?	<input type="checkbox"/>	<input type="checkbox"/>	
7 Do you support the inclusion of a paragraph which provides a comprehensive listing of the responsibilities of the Board (paragraph 11)?	<input type="checkbox"/>	<input type="checkbox"/>	
8 Is the inclusion of guidance on how the requirements of paragraph 11 should be met in the context of terminating contracts of employment by agreement helpful?	<input type="checkbox"/>	<input type="checkbox"/>	
9 Do you support the inclusion of a paragraph which brings together all the committees which a Board is required to establish (paragraph 12)?	<input type="checkbox"/>	<input type="checkbox"/>	
10 Do you support the inclusion of a paragraph which provides a comprehensive listing of the responsibilities of the Chief Executive (paragraph 14)?	<input type="checkbox"/>	<input type="checkbox"/>	
11 Is the reference to the Chief Executive as an 'accounting officer' helpful in establishing the Chief Executive's responsibility for the stewardship of public funds (paragraph 15)?	<input type="checkbox"/>	<input type="checkbox"/>	

<i>Proposed aim</i>	<i>Agree</i>	<i>Disagree</i>	<i>Comments</i>
12 Is the clarification of the Chief Executive's responsibilities in the event of the Board's consideration of a policy or action which is incompatible with the financial memorandum helpful (paragraph 16)?	<input type="checkbox"/>	<input type="checkbox"/>	
13 Is the statement of the Council's position with regard to disciplinary action or the suspension of the Chief Executive in these circumstances helpful (paragraph 16)?	<input type="checkbox"/>	<input type="checkbox"/>	
14 Is the requirement on Boards to establish the procedures they would expect the Clerk to follow in the event that the Clerk considers the Board is acting beyond its powers helpful (paragraph 17)?	<input type="checkbox"/>	<input type="checkbox"/>	
15 Is the statement of the Council's position with regard to disciplinary action or the suspension of the Clerk in these circumstances helpful (paragraph 17)?	<input type="checkbox"/>	<input type="checkbox"/>	
16 Is the Council's commitment to provide a statement on the Council's main allocation to the college for the year helpful (paragraph 20)?	<input type="checkbox"/>	<input type="checkbox"/>	
17 Is the commitment to an earlier notification of the value of the Council's monthly payment helpful (paragraph 21)?	<input type="checkbox"/>	<input type="checkbox"/>	

<i>Proposed aim</i>	<i>Agree</i>	<i>Disagree</i>	<i>Comments</i>
18 Is the substitution of general guidance on the manner in which the Board should manage and develop its estate for the requirement on colleges to consult the Council on all projects with a value in excess of £1,000,000 helpful (paragraph 25)?	<input type="checkbox"/>	<input type="checkbox"/>	
19 Is the clarification of when consent is required for major projects helpful (paragraph 25)?	<input type="checkbox"/>	<input type="checkbox"/>	
20 Is the extension to the general power to borrow desirable (paragraph 30)?	<input type="checkbox"/>	<input type="checkbox"/>	
21 Is the extension to the period for providing the Council with audited accounts desirable (paragraph 32)?	<input type="checkbox"/>	<input type="checkbox"/>	
22 Is the codification of the requirement on colleges to notify the Council if there is a significant deterioration in its financial position desirable (paragraph 34)?	<input type="checkbox"/>	<input type="checkbox"/>	
23 Does paragraph 35 represent an improvement on paragraph 39 of the current financial memorandum?	<input type="checkbox"/>	<input type="checkbox"/>	

<i>Proposed aim</i>	<i>Agree</i>	<i>Disagree</i>	<i>Comments</i>
24 Is the inclusion of clarification of the extent of information which the Council intends to seek from colleges helpful (paragraph 41)?	<input type="checkbox"/>	<input type="checkbox"/>	
25 Is the inclusion of a specific reference to penalties helpful (paragraph 44)?	<input type="checkbox"/>	<input type="checkbox"/>	
26 Do you have any other comments on specific paragraphs of the proposed revised financial memorandum?	<input type="checkbox"/>	<input type="checkbox"/>	
27 Do you have any other comments on the proposed revised financial memorandum?	<input type="checkbox"/>	<input type="checkbox"/>	
28 On balance do you approve of the revised financial memorandum?	<input type="checkbox"/>	<input type="checkbox"/>	

