

## **TERMS AND CONDITIONS FOR APPOINTMENT AS MEMBER OF THE HIGHER EDUCATION FUNDING COUNCIL FOR WALES**

*(Issued to new Council member appointees from December 2017.)*

### **INTRODUCTION**

This document sets out the principal terms and conditions of your Appointment with the **Higher Education Funding Council for Wales (the Body)**.

### **PARTIES**

**(1) [INSERT NAME]**

**(2) Department of Skills, Higher Education and Lifelong Learning, Welsh Government**

### **1. PERIOD OF APPOINTMENT**

a) Your appointment will commence on the **[DATE]** and expire automatically on **[DATE]**. The appointment can be terminated early by either party, by giving 3 months notice, in writing.

### **2. ROLE TITLE AND DUTIES**

- a) You are appointed as member of the Higher Education Funding Council for Wales ("The Council"). Your current duties are detailed in Schedule 1 and may be amended from time to time. Any changes will be discussed with you fully and notified to you in writing.
- b) The Council will normally meet six times a year. As a member of the Council you are expected to attend the meetings regularly. By accepting this appointment you confirm that you are able to allocate sufficient time to meet the expectations of your role.
- c) Your performance will be assessed annually by the Chair of the Higher Education Funding Council for Wales in accordance with your duties.
- d) As a member you will be expected to adhere to the Seven Principles of Public Life as set out by the Committee on Standards in Public Life. Further detail on what these standards are can be found in Schedule 2, Annex A. In summary these are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

### **3. STATUS**

- a) You are not an employee. Accordingly, nothing in these terms and conditions shall be construed as, or taken to create, a contract of employment between yourself and the Department. In addition, nothing in these terms and conditions shall be construed as, or taken to create, any contract of service or contract for services between yourself and the Welsh Government.
- b) This appointment will be treated as an appointment to a Public Office. Consequently for tax purposes you will be treated as a Public Office Holder in relation to this appointment.

#### **4. FEE**

- a) Your fee is £5,076 per annum based on a minimum time commitment of 18 days a year (including time preparing for meetings and travelling time). Members are regarded as holders of an Office for tax and National Insurance purposes. Fees payable will, as a result, be chargeable to tax under Section 62 of the Income Tax Earnings and Pensions Act 2003 and subject to Class 1 National Insurance contributions. These liabilities will be deducted via the public body's payroll system and the net fee paid to the Office holder. You should direct any queries relating to deductions direct to your own tax Office.
- b) This appointment is non-pensionable.
- c) No bonuses will be payable.
- d) The Body will reimburse all reasonable expenses (including travel, subsistence and other expenses) properly and necessarily incurred in respect of your appointment. Invoices for reimbursement with supporting receipts should be sent to the Clerk of the Council. You are entitled to claim expenses at the rates specified by the Welsh Government, as amended from time to time.
- e) Any credit card supplied to the Appointee by the Body shall be used only for expenses incurred by him in the course of the performance of his duties.
- f) All remuneration relating to the appointment is taxable and PAYE in respect of income tax and National Insurance. Contributions will be deducted at source. You should direct any queries relating to deductions direct to your own tax office.
- g) If you are in receipt of a pension operated by the Civil Service Pension Scheme your pay or pension may need to be abated to comply with the UK Government's policy on abatement. Further information on abatement may be sought from the My CSP.
- h) If you are taking up a paid post then information about your fee will be disclosed in the annual departmental accounts, the Council accounts, and the Welsh Government accounts. Details of the information to be disclosed are given in chapter 11 of Executive Non-Departmental Public Bodies: Annual Reports and Accounts Guidance issued by the Treasury. The disclosure of additional information may be required in the event that the provisions of the Resource Accounting Manual are amended. By accepting this appointment you hereby understand that this information will be disclosed.

#### **5. WELSH GOVERNMENT / SPONSORED BODY PROPERTY**

- a) All documents, manuals, hardware and software provided for your use by the Body, and any data or documents (including copies) produced, maintained or

stored on the Body's computer systems or other electronic equipment (including mobile phones), remain the property of the Body.

- b) Any property belonging to the Body in your possession and any original or copy documents obtained by you in the course of your employment shall be returned to the Body at any time on request and in any event prior to the termination of your appointment with the Body.

## **6. DEDUCTIONS**

- a) You authorise the Body at any time during your appointment and/or on its termination to deduct any sums owed by you to the Body at any time (to include, without limitation, retaining WG property, unverified expenses/credit card use) from your Fee.

## **7. NOTICE AND TERMINATION OF APPOINTMENT**

- a) Notwithstanding clauses 7(b) to (d) below, either party may terminate this appointment for any reason before the expiry of the fixed period by giving three months' notice in writing.
- b) No notice period is applicable if this appointment is terminated early by mutual consent.
- c) Should the Higher Education Funding Council for Wales be dissolved, restructured or wound up during the period of your appointment, your appointment would cease with effect from that dissolution, restructuring or winding up, or such other date as is specified in any relevant legislation.
- d) The Higher Education Funding Council for Wales may terminate your appointment immediately by giving notice in writing if:
  - i. you become bankrupt or make an arrangement with creditors,
  - ii. your estate has been sequestrated in Scotland or you enter into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) as the debtor or have, under Scots law, granted a trust deed for creditors,
  - iii. you become subject to a debt relief order or a bankruptcy restrictions order,
  - iv. you have been absent from meetings of the Council for a period of more than 6 months without the permission of the Chair,
  - v. you are disqualified from acting as a company director,
  - vi. you have been convicted (whether before or after appointment) of a criminal offence, the conviction not being spent for the purposes of the Rehabilitation of Offenders Act 1974 (c. 53),
  - vii. you improperly accept any gifts or hospitality,
  - viii. you fail to declare any conflict of interest,

- ix. there is a statutory provision requiring your appointment to be terminated for whatever reason,
  - x. you breach the Code of Conduct for Board Members of Public Bodies, or
  - xi. you are, in the opinion of the Welsh Government, unable or unfit to discharge the functions of the appointment for any other reason.
- e) You are required to notify the Chair immediately should any of the situations listed at clause 7(d) above become applicable to you during the term of your appointment.
- f) If the Department proposes to terminate your appointment for whatever reason prior to the expiry of the fixed term, you will be notified of the proposal and of the reasons for it and will be offered an opportunity to have a meeting with the Senior Sponsor, Welsh Government before any final decision is taken. If your appointment is subsequently terminated you will receive notice in writing of this fact, such notice to contain a statement of reasons for termination.
- g) In the event that you are notified that the Department is proposing to terminate your appointment in accordance with 7(f) above, the Chair may require that you do not carry out your role as Member of the Board until a decision on the termination of your appointment has been made.
- h) In the event that you are subject to a police investigation or you are arrested by the police you must notify the Chair who may require you to stand down from your position for the duration of the investigation.
- i) On termination of this appointment for whatever reason, you shall only be entitled to accrued fees as at the date of termination together with reimbursement of any expenses properly incurred prior to that date. For the avoidance of doubt, you will not receive any compensation or other payments in relation to the termination of your appointment.

## 8. CONDUCT

- a) As a Public Office Holder, you are required to follow the “Seven Principles of Public Life” set out by the Committee on Standards in Public Life (copy attached at Schedule 2, Annex A).
- b) You are accountable to the Council and, through the Chair, to the Cabinet Secretary for Education for your conduct and you are expected to work to the highest personal and professional standards.
- c) You are required as a condition of your appointment to abide by the Body’s Code of Conduct that forms part of these terms and conditions of appointment and is attached at Schedule 3 *[This is the current HEFCW Code of Conduct for Members, not reproduced here].*

- d) If you believe you, or staff of the Body, are being required to act in a way which:
- is illegal, improper, or unethical;
  - is in breach of constitutional convention or a professional code, the Code;
  - may involve possible maladministration; or
  - is otherwise inconsistent with the Seven Principles of Public Life,
- you have a responsibility to report the matter through Alison Bryant, as Senior Sponsor of the Welsh Government.
- e) There may be rare occasions involving very serious or urgent concerns where you feel it would not be appropriate to raise the issue internally in the Body (either with the chair or any nominated official in the Body). If it is not possible to raise the issue internally, you should raise it with the Senior Sponsor of the Welsh Government or, in the most extreme cases, with the Minister responsible for the Body. You should report evidence of criminal or unlawful activity by others to the appropriate authorities.

## **9. GIFTS AND HOSPITALITY**

- a) You must not accept any gifts or hospitality which might, or might reasonably appear to compromise your personal judgment or integrity or place you under an improper obligation. If you choose to accept a gift or hospitality this must be recorded in your Bodies public register.
- b) You must comply with the Code of Conduct for Board Members of Public Bodies (the Code) as enforced from time to time on the acceptance of gifts and hospitality. The Code is attached at Schedule 2.

## **10. CONFLICTS OF INTEREST**

- a) You must ensure that no conflict arises, or could reasonably be perceived to arise, between your public duties and your private interests – financial or otherwise.
- b) You must comply with the Code of Conduct for Board Members of Public Bodies (the Code) on handling conflicts of interest. As a minimum, these will require you to declare publicly any private interests which may, or may be perceived to, conflict with your public duties. In general, all financial interests should be declared.
- c) You must remove yourself from the discussion or determination of any matters (this includes formal discussions of the Body and informal discussions) in which you have a financial interest or any other matter where your interest might suggest a danger of bias.
- d) All declared interests will be included in the Body's register of members' interests maintained by the Body and you must ensure that your entry is accurate and up to date.

- e) Information on potential conflicts of interest could be disclosed to the public under the Freedom of Information Act 2000. By accepting this appointment you hereby accept that some or all of this information may be disclosed.
- f) When an interest is recorded in the register you must seek confirmation from the Chair of the Council that no conflict has arisen and it is appropriate for you to remain as part of the Board. You should not undertake any work on behalf of the Board until you have received this confirmation. If you are in doubt as to whether a conflict has arisen then it will be for the Chair to determine whether a conflict exists. If you are to be appointed as the Chair of the Board then you should seek confirmation from the Welsh Government Sponsor Branch that it is appropriate for you to accept the post.

## **11. POLITICAL ACTIVITY**

- a) In your public role, you should be, and be seen to be, politically impartial. You should not occupy a paid party political post or hold a particularly sensitive or high-profile role in a political party. You should abstain from all controversial political activity and comply with the principles set out in the Welsh Government rules on attendance at Party Conferences and on conduct during the period prior to elections and referendums whether local, national or European.
- b) On matters directly related to the work of the Body, you should not make political statements or engage in any other political activity.
- c) You should inform the Chair, who will inform the senior sponsor, and wait to receive written approval before undertaking any significant political activity.
- d) Further details of the expectations regarding political activity can be found in the Code at Schedule 3.
- e) If you accept a nomination for election to the Welsh Assembly or House of Commons, you will resign this appointment.

## **12. CONFIDENTIALITY/USE OF OFFICIAL INFORMATION**

- a) You are required to exercise care in the use of information that you acquire in the course of your duties and to protect information that is held in confidence.
- b) You are subject to the provisions of the Official Secrets Act 1989 and you must not disclose any information which is confidential in nature or which is provided in confidence without authority. You must not misuse information gained in the course of your appointment for personal gain or for political purpose.
- c) The misuse of information gained by virtue of your position as Member of the Board may result in your appointment being terminated immediately without notice and/or criminal prosecution.

- d) The requirements in this clause 11 apply both during the term of your appointment and after your appointment has terminated.

### 13. BUSINESS APPOINTMENTS

- a) You are required to obtain prior approval from the Chair and Senior Sponsor in advance of accepting any appointment or employment offered to you during your term of appointment where your official duties with the Board resulted in:
- i) personal involvement with the company or other organisation making the offer; and/or
  - ii) access to commercially sensitive information of the company or other organisation making the offer, or of a competitor of the company or other organisation making the offer.
- b) On leaving office, you must comply with the rules of the Body on the acceptance of future employment or appointments.

### 14. DATA PROTECTION

By accepting this appointment you consent to the Welsh Government holding and processing information about you for legal, personnel and administrative purposes and in particular to the processing of any sensitive personal data (as defined in the Data Protection Act 1998). You consent to the Welsh Government making such information available in appropriate circumstances, including within the Civil Service in reporting to Assembly and Parliamentary Committees or Wales Audit Office and National Audit Office or otherwise.

### 15. CHAIR/MEMBER'S LIABILITY

The Department will provide that where you have acted honestly, reasonably, in good faith and without negligence you will not have to meet out of your own personal resources any personal civil liability which is incurred in the execution of your Board functions.

**Signed** \_\_\_\_\_

On behalf of the Department of Skills, Higher Education and Lifelong Learning, Welsh Government

**(Date)** \_\_\_\_\_

**Signed** \_\_\_\_\_

[Member]

**(Date)** \_\_\_\_\_

## Schedule 1

### Role and Responsibilities

- a) As a Council Member you will be expected to:
- work closely with the Chair and the Chief Executive in giving advice and encouragement to HEFCW in the initiation, development and implementation of policy and in the fulfilment of its statutory responsibilities;
  - attend meetings of the Council and contribute, and be party to key decisions concerning the Council's strategy;
  - provide authoritative and timely advice to the Welsh Government between meetings;
  - chair or be a member of committees of the Council, as and when required;
  - uphold, and be widely perceived to uphold, the highest standards of integrity and impartiality;
  - build respect for the work of the Council; and
  - be able to deal confidently with the Welsh Government, its officials and Ministers, and the Welsh Higher Education sector.

### Reappointments

- b) Reappointments and extensions require the agreement of Ministers.
- c) There is no automatic presumption of reappointment; each case should be considered on its own merits, taking in to account a number of factors including, but not restricted to, the diversity of the current board and its balance of skills and experience. This information along with a satisfactory performance appraisal for the board member must be made available to the Department.

### Length of tenure

- d) Subject to any statutory provisions relating to the body to which the appointment is being made, it is for Ministers to decide on length of tenure. However there is a strong presumption that no individual should serve more than two terms or serve in any one post for more than ten years.

**Schedule 2**

**CODE OF CONDUCT FOR BOARD MEMBERS  
OF PUBLIC BODIES IN WALES**

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**Annex A**

The Seven Principles of Public Life

## 1 INTRODUCTION

- 1.1 The Welsh Government expects all holders of public office to work to the highest personal and professional standards. In support of this, all board members of public bodies in Wales are required to abide by the principles set out in this Code of Conduct. Non compliance with this Code shall be viewed as a breach of your terms and conditions of appointment.
- 1.2 Your appointment as a board member may be terminated should you fail to perform your duties to the appropriate standards or where it is determined that your conduct means that you are no longer a suitable person to hold public office.
- 1.3 The role and responsibilities of board members is outlined in the Framework Document agreed between the Welsh Government and the Body whilst specific terms and conditions of service are set out in board members' individual letters of appointment.

## 2 KEY PRINCIPLES OF PUBLIC LIFE

- 2.1 As a board member your behaviour, actions and the decisions you make must be fully consistent with the principles set out in this Code of Conduct. It is your responsibility to ensure that you are familiar with, and comply with, all the relevant provisions of this code.
- 2.2 The key principles upon which this Code of Conduct is based are the Seven Principles of Public Life. These are attached at Annex A. In addition Taking Wales Forward sets out the government's priorities under the Programme for Government.

## 3 GENERAL CONDUCT

- 3.1 As a board member you will be expected to:
  - play a full and active role in the work of the body and to fulfil your duties and responsibilities conscientiously and act, at all times, in good faith and in the best interests of the body;
  - deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively and to the best of your abilities;
  - comply with any statutory or administrative requirements relating to your post; and
  - respect the principles of collective decision-making and corporate responsibility.

You must not:

- act in a way that favours unjustifiably or discriminates unfairly against particular individuals or interests; nor
- use - or attempt to use - the opportunity of public service to promote your personal interests or those of any connected person, firm, business or other organisation.

### **Use of Public Funds**

- 3.2 You have a duty to safeguard public funds - which for this purpose should be taken to include all forms of receipts from fees, charges and other sources - and to ensure the proper custody of assets which have been publicly funded.
- 3.3 You must take appropriate measures to ensure that the body at all times uses its resources as economically, efficiently and effectively as possible, with full regard to the relevant statutory provisions and to relevant guidance in Managing Welsh Public Money.
- 3.4 You are responsible for ensuring that the body does not exceed its powers or functions, whether defined in statute or otherwise, or through any limitations on its authority to incur expenditure.

### **Allowances**

- 3.5 You must comply with the rules set by the board of the body regarding remuneration, allowances and expenses. It is your responsibility to ensure compliance with all relevant HM Revenue and Customs' requirements concerning payments, including expenses.

### **Use of Official Resources**

- 3.6 You must not misuse official resources – facilities, equipment, stationery, telephony and other services, for example – for personal gain or for political purpose. Use of such resources must be in line with the body's rules on their usage.

### **Use of Official Information**

- 3.7 You must not use any knowledge gained from your work as a member of the board of the body for private profit or any other direct or indirect gain, neither should you lay yourself open to suspicion of doing so. You must not, without receiving proper authority, disclose any information which is confidential in nature or which is provided in confidence to you. This duty continues to apply even after you have left the board.

### **Hospitality, Gifts and Other Benefits**

- 3.8 You must not accept any gift, hospitality or benefit of any kind which might be seen to compromise your personal judgement or integrity or to influence you to show favour or disfavour to any person or organisation. Nor should you leave yourself open to the accusation that you might have been so influenced. If a gift is sent to you which you feel you cannot return, or a gift or hospitality is offered to you in circumstances in which it would cause embarrassment or offence (to you or the giver or others present) if you were to decline it, you should promptly record its receipt in writing in the public register of gifts maintained by the body for such purpose.

## **Political Activity**

- 3.9 In your public role you must abstain from all controversial political activities and be - and be seen to be – politically impartial. You should not occupy a paid party political post, nor hold a particularly sensitive or high-profile role in a political party. On matters directly affecting your work as a board member, you should not make political statements nor engage in other political activities. You must abide by any guidance issued from time to time by the Welsh Government on attendance at Party Political Conferences etc.
- 3.10 If you are a member of the UK Parliament, the House of Lords, the National Assembly for Wales and/or other Devolved Administrations or are a local councillor you are exempt from these requirements, although you should still exercise proper discretion on matters directly relating to the work of the body and recognise that certain political activities may be incompatible with your role as a board member.

## **4 MEMBERS' INTERESTS**

### **Handling Conflicts of Interests**

- 4.1 You must comply with the rules set in place by the body as to the handling of conflicts of interest. As a minimum these will require that you:
- declare as soon as possible in the public register kept by the body for such purpose any personal or business interests you maintain which may - or may be perceived to - conflict with your public duties;
  - withdraw from the discussion or determination of matters in which you have a direct pecuniary interest (in matters in which you have an interest that is not of a direct pecuniary kind, you should consider whether participation in the discussion or determination of such would suggest a real danger of bias).
- 4.2 It is your responsibility to ensure that your entry in the body's register of members' interests is accurate and kept fully up-to-date.
- 4.3 Conflicts of Interest are dealt with in more detail in your terms and conditions of employment.

### **Business Appointments/Acceptance of Appointments during Term of Office and Following Resignation or Retirement**

- 4.4 On taking up your appointment to the body you were required to make a declaration detailing any/all your other employment/business appointments. You should be aware that the body's rules on handling conflicts of interest also include provisions should you seek to take up any new position during the period of your appointment. On leaving you must comply with the rules of the [name of body] on acceptance of future employment or opportunities.

- 4.5 For the avoidance of doubt you should consult with your board and the Welsh Government before accepting any new appointments.

## **5 RELATIONSHIP WITH EMPLOYEES**

- 5.1 The Chief Executive is responsible for the day-to-day management of the body [and is, ex-officio, a member of its board]. The Chief Executive and other staff are available to advise, inform and assist you with your duties as a board member. As such, you will need to liaise closely with the Chief Executive and other senior staff in order that you might exercise your responsibilities effectively.
- 5.2 To the extent permitted by the [*state Act/Charter/Warrant or other provision under which the body in question was established*], responsibility for day-to-day management matters should be delegated to staff so far as is practicable within a clearly defined framework of strategic control outlining, inter alia, those matters which are to remain reserved exclusively for decision by the board (issues of corporate strategy; key strategic objectives and targets; major decisions involving the use of financial and other resources; and personnel issues including key appointments and standards of conduct, for example).
- 5.3 All boards have a responsibility to monitor the performance of the Chief Executive and other senior staff. Where the terms and conditions of employment of such officers include an entitlement to be considered for performance-related pay, and where such payments are assessed by the board, you must ensure that you are satisfied that you have access to all pertinent detail and advice necessary to make fully informed judgements.
- 5.4 You must not ask or encourage employees to act in any way which would conflict with their Code of Conduct.

## **6 PERSONAL LIABILITY OF BOARD MEMBERS**

- 6.1 Although any legal proceedings initiated by a third party are likely to be brought against the board of the body as a whole, in exceptional cases proceedings (civil or, in certain cases, criminal) may be brought against the chairperson or other individual board members (a board member may be personally liable if he or she makes a fraudulent or negligent statement which results in loss to a third party, for example). Board members who misuse information gained by virtue of their position may be liable for breach of confidence under common law or may commit a criminal offence under insider dealing legislation.<sup>1</sup>
- 6.2 The Welsh Government has indicated, however, that an individual board member who has acted honestly and in good faith will not have to meet out of

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<sup>1</sup> In the case of a board which is incorporated under Companies Act legislation, an individual board member will be subject to the duties of directors under company law.

their own personal resources any personal civil liability which is incurred in execution or purported execution of their board function, save where he/she has acted recklessly. Subject to its own specific statutory powers, then, the body should issue to its board members suitable indemnities consistent with this paragraph.

- 6.3 Board members who need further advice should consult the body's legal advisers.

## **The Seven Principles of Public Life**

### **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### **Leadership**

Holders of public office should promote and support these principles by leadership and example.