

Financial Memorandum

FOREWORD

This booklet is the official financial guide for the Governing Bodies and managers of Institutions of Further Education. It complements, but does not override, relevant education legislation for Institutions of Further Education.

It reflects a wide range of financial issues addressed by Institutions of Further Education.

Updated and new sections will be produced as and when necessary to reflect new developments.

If you have any queries relating to the application of the guidance, please speak to your regular contact in Further Education Division of the Department.

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INTRODUCTION

1. This Memorandum sets out the terms and conditions for the payment of grants by the Department for Employment and Learning to the Governing Bodies of colleges out of funds provided by the Northern Ireland Assembly. The Memorandum applies to funding for recurrent expenditure and capital expenditure. Its purpose is twofold:

- to ensure that the funds voted by the Northern Ireland Assembly for the delivery of further education by colleges are used efficiently and effectively and only for the purposes for which they have been allocated; and
- to set out the respective responsibilities of the Department and of the college, especially with regard to the planning, budgeting and control of resources.

2. The Department has the power to offer grants to the Governing Bodies of colleges under the terms of Article 5 of the Further Education (Northern Ireland) Order 1997 and to attach conditions to such offers of grant, and to prescribe the form of accounts to be kept. These funds are to assist the governing bodies in the discharge of their functions under the Order.

3. The Governing Body shall ensure that any funding from the Department is used only in support of activities permitted by the Further Education (Northern Ireland) Order 1997, the terms of this Memorandum and any other conditions which the Department may prescribe from time to time. The terms set out below do not alter the powers and duties of the Governing Body. Such terms are in addition to, and not in substitution for, any guidance or direction issued by the Department in relation to any of the individual functions, powers and duties of the Governing Body. Funds should be used in such a way as to be consistent with College Development Plans. The Department will scrutinise such Plans and monitor income and expenditure.

4. Unless otherwise stated, the terms of this Memorandum also apply to monies obtained from sources other than the Department such as tuition fees, other income from students and cost recovery courses. It also embraces income generated by a company established by the college.

5. Any company established by the college will be regarded as an integral part of the college and will be subject to the controls set out in this Memorandum. In setting up the company, the Governing Body must ensure that there is a covenant between the college and its company that requires that the Governing Body receive all profits of the company. The Memorandum and Articles of Association of any company formed by the college must be approved by the Department prior to the establishment of the company. Likewise any amendments to the Memorandum or Articles must be submitted to the Department for approval before being implemented.

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6. For the purposes of this Memorandum:

- "the Department" means the Department for Employment and Learning;
- "college" means an institution of further education as defined in Article 2(2) of the Further Education (Northern Ireland) Order 1997;
- "the Order" means the Further Education (Northern Ireland) Order 1997;
- "academic year" and "financial year" mean the 12-month period ending on 31 July;
- "Principal" means the person charged by the Governing Body to be responsible for the management of the college;
- "Exchequer Funds" means all monies received from Government sources and includes funds received from education and library boards;
- "land" includes land covered with water;
- "interest in land etc" means any estate in land, buildings or structures or any right in or over land, buildings or structures, including any right to occupy or use such property or to restrict the occupation or use of the property.

7. Within this Memorandum "must" and "shall" indicate a mandatory requirement, "should" denotes the Department's view of good practice and "may" indicates areas where there is a degree of discretion.

ACCOUNTABILITY

Responsibilities of the Department's Accounting Officer

8. The Permanent Secretary of the Department for Employment and Learning is the Accounting Officer and as such is responsible to the Minister for Employment and Learning and to the Northern Ireland Assembly for the propriety and regularity of use of all resources voted by the Northern Ireland Assembly for employment and learning purposes in Northern Ireland. This includes monies distributed to colleges from other Government Departments and statutory agencies, NDPBs etc.

The Permanent Secretary is responsible for:

- ensuring value for money in the utilisation of these resources;
- ensuring that any conditions attached to the issue of grant conform to the terms of the vote;

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- monitoring compliance with any terms and conditions of grant;
- ensuring that the Department applies financial and management controls which are appropriate and sufficient to safeguard public funds and ensure value for money; and
- satisfying himself that the procedures, controls and structures being applied within colleges conform to the requirements of propriety and of economical, efficient and effective financial management, and that the arrangements and conditions set out in this Memorandum are observed and implemented by colleges.

9. To assist in the discharge of the Accounting Officer's responsibilities, the Department:

- will keep under review the systems and controls in place so that high standards of financial management are in place, public finance safeguarded and value for money achieved;
- will carry out inspections and reviews of aspects of the work of colleges to confirm that systems and procedures comply with the requirements of the Department and with best practice. Draft reports will be discussed with the Principal of the college to ensure factual accuracy. The Department will discuss and agree with the college any recommendations that ought to be implemented, together with an agreed time-scale;
- will expect colleges to co-operate fully in the conduct of any reviews initiated; and
- will require each college to review regularly its systems and procedures to ensure compliance with the Department's requirements and value for money. Without prejudice to the right of the college to determine the subject and scope of such reviews, the Department reserves the right to specify particular aspects of college activity which it feels the college should examine.

Responsibilities of the Governing Body

10. The Governing Body shall be responsible for ensuring that any grant from the Department or other exchequer funds are used only in accordance with the terms of this Memorandum and shall take such steps as are necessary to fulfil its obligations. The Department's Accounting Officer expects the Governing Body, in exercising its responsibilities, to pay particular attention to the following principles of good financial management:

- the financial business of the college should be conducted in accordance with the arrangements and conditions set out in this Financial Memorandum;

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- every effort must be made to ensure that the college operates within its available budget;
- due attention must be paid to the efficient and effective management of all the colleges resources and expenditure, capital assets, equipment and staff so that public funds are not put at risk and that value for money and other financial considerations are taken into account in reaching decisions and in their execution;
- the college must comply with such other relevant guidance/instructions on financial control as are issued by the Department from time to time; and,
- the college should formulate and implement a policy to ensure that its accounting and other procedures contain all reasonable safeguards against fraud and theft.

11. The Governing Body shall take such steps as the Department may from time to time require, to confirm that the system for financial planning, management and organisation of the college is such as to enable the Governing Body to fulfil their obligations under this Memorandum and is appropriate and sufficient to safeguard public funds.

Personal Liability of Governors

12. Any legal proceedings initiated by a third party are more likely to be brought against the Governing Body rather than an individual Governor. However, in exceptional cases, proceedings (civil or, in certain cases, criminal) may be brought against the chairman or other individual Governors. For example, a Governor may be personally liable if he or she makes a fraudulent or negligent statement that results in loss to a third party. Governors 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.

13. Governors of colleges that register as a Company under the Companies Act or the Companies (Northern Ireland) Order will be subject to the duties of directors under company law.

14. Where individual Governors have acted honestly, reasonably, in good faith and without negligence they will not have to meet out of their own personal resources any personal civil liability which is incurred in execution or purported execution of their function as a Governor.

Responsibilities of the College Principal

15. The Principal shall be formally designated Accounting Officer for the college by the Accounting Officer of the Department and shall be responsible and accountable to the Northern Ireland Assembly, for the proper stewardship of expenditure by the Governing

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Body from grant and monies obtained from sources other than the Department in accordance with the terms of this Memorandum.

16. The respective responsibilities of the Governing Body and the Principal are set out in the Order and in the college's Articles of Government. Within this framework the Governing Body will require the Principal to take personal responsibility for ensuring the proper and effective operation of the controls referred to in paragraph 15 above, and for giving effect to the Governing Body's policies for ensuring the efficient, effective and economical management of all the college's resources and expenditure. The day-to-day duties associated with these policies may be delegated to the Finance Officer, but the Principal shall still retain overall accountability for them.

17. In particular, the Principal shall be responsible for:

- personally signing the college accounts and for causing records to be kept relating to them; and for ensuring that they are properly presented in a form approved by the Department;
- ensuring that the college maintains, to the satisfaction of the Department, an appropriate system of financial management, which should take account of any advice issued by the Department. He should ensure that there are adequate procedures, controls and structures within the college which conform to the requirements of propriety and of economical, efficient and effective financial management, and that the arrangements and conditions set out in this Memorandum are observed and implemented by the college. The systems procedures and controls should be documented;
- ensuring that the college makes payments only in respect of liabilities which have properly matured and for which the college has been invoiced; that payments are not postponed in order to avoid possible overspend; and that there is adequate documentation to support payments including receipts which should be collected promptly;
- ensuring that the college complies with guidance/instructions on financial control as may be issued by the Department from time to time;
- advising the Governing Body on the discharge of their responsibilities under this Memorandum and ensuring that the college does not exceed the limit of any delegated authority, e.g. in writing off any losses;
- exercising personal authority to write-off losses and make special payments, up to the limits approved by the Department;
- ensuring that the college's assets, including buildings, land stores and equipment are maintained and safeguarded with checks as appropriate. The college should maintain an up to date asset register;

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- ensuring that conflicts of interest are avoided, whether in the proceedings of the Governing Body, or in the actions of any staff of the college, including himself;
- ensuring that, in the consideration of policy proposals relating to expenditure or income for which he, as Accounting Officer has responsibility, all relevant considerations, including any issues of propriety, regularity or value for money, are taken into account and, where necessary, brought to the attention of the Governing Body;
- accompanying the Department's Accounting Officer, if required to do so, at hearings on matters relating to public funding which arise before the Public Accounts Committee;
- complying with such recommendations of the Public Accounts Committee and any other Northern Ireland Assembly authority.

18. The Principal may be assisted by employees/members of the Governing Body, but shall not assign absolutely to any person the responsibilities set out in paragraph 17.

19. The Principal of the college shall have responsibility for advising the Governing Body if, at any time, any action or policy under consideration by the Governing Body appears to be incompatible with the terms of this Memorandum. In the event of the Governing Body deciding nevertheless to proceed, the Principal must inform the Permanent Secretary immediately in writing. The Principal may be required to appear before the Public Accounts Committee alongside the Permanent Secretary of the Department on matters relating to grant to the college which arise before that Committee.

20. Accounting Officers should ensure that they are generally available for consultation, and that in any temporary period of unavailability, a senior member of staff will be able to act on their behalf as required. Where the Principal is expected to be unavailable for a period in excess of 4 weeks the Department should be informed so that an Acting Accounting Officer can be formally appointed.

THE PLANNING AND REPORTING FRAMEWORK

21. The detail of the framework for planning and reporting is set out in Appendix A. The college must have a clearly defined planning process in which a College Development Plan is prepared based on reasonable assumptions on student demand for courses, community needs and the likely level of resources which the college will have at its disposal. It is important for those the sector seeks to serve that the college uses the planning process as a means of setting itself realistic but nevertheless challenging targets for improvement. The Department requires that College Development Plans accord with Government policies and priorities appropriate to the sector, especially in relation to the aims, objectives and targets set out in the Department's Strategic Plan for Education. Following approval by the Governing Body, 3 copies of the Development Plan must be forwarded to the Department.

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22. To assist in the planning process, the Department will inform the college as soon as possible in each calendar year of its budget for the incoming financial year together with an indication of the total level of resources planned for the subsequent 2 years. The Department will inform the sector annually of progress towards the achievement of the strategic objectives set out in the Strategic Plan for Education.

23. The college will prepare an Annual Report detailing its achievements in respect of the previous financial year, especially with regard to the challenges which it set itself in the College Development Plan, covering the year in question. Following approval by the Governing Body, 3 copies of the Annual Report must be forwarded to the Department.

ALLOCATION OF FUNDS

24. The overall amount of financial resources to be made available to colleges in any one year will be determined by the Department in accordance with Government priorities and after considering the financial circumstances of the colleges, their proposed programmes for future activities, their performance in achieving agreed objectives and in the light of the competing demands on resources. The payment of funds will, under the Order, be subject to such terms and conditions as the Department may impose, including those set out in this Memorandum.

25. The Department reserves the right to vary the offer of grant or to withhold payment of grant in the event of a failure to observe the terms of this Memorandum. The Department may also require the repayment, in whole or in part, of sums paid if any conditions subject to which the sums were paid are not complied with. Grant not issued by the Department at the end of the financial year shall lapse.

26. In allocating funds, the Department will distinguish between those intended for recurrent expenditure and those intended for capital expenditure:

Recurrent funds are intended to meet the recurrent costs of the college; and,

Capital funds are intended to meet expenditure on land and buildings, new construction and extension of and alterations to buildings and the purchase of any fixed assets, e.g. equipment, furniture, plant and vehicles having a life expectancy of more than one year and having an initial value above the threshold set in the Accounts Direction. It excludes the routine maintenance of buildings and other assets. In cases where accommodation and associated costs are procured under the Private Finance Initiative, service fees paid to the private sector contractor will be met from recurrent rather than capital funds and will be allocated as such. Capital funds will normally be subdivided as follows:

- i. grants for major capital works costing more than £1million (exclusive of fees, furniture and equipment but inclusive of VAT) and for the purchase of the land and sites for capital works;
- ii. grants to cover minor building works costing £1million or less (exclusive of fees, furniture and equipment but inclusive of VAT); and

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- iii. grants for the purchase of equipment for education, training and administration including computers and for the purchase of furniture.

27. Whilst colleges will have flexibility to decide on the allocation of expenditure within these headings, the Department reserves the right to earmark allocations for specific purposes.

28. The recurrent funding to be made available to each college will be determined by means of a formula that shall be operated by the Department. The Department will discuss the operation of the formula with colleges and such other bodies, as the Department considers appropriate and consult fully before implementing any changes.

VIREMENT

29. The college may transfer recurrent funds to capital funds but shall not transfer capital funds to recurrent funds. The college may transfer funds from 26.ii. to 26.i. above, but not the reverse. It may also transfer funds between 26.ii. and 26.iii. above, but not the reverse.

THE PAYMENT OF RECURRENT FUNDS

30. The Department shall notify the Governing Body in advance of each financial year of the amount of grant-in-aid available to the Governing Body.

31. In recognition that the funds voted by the Northern Ireland Assembly for employment and learning are subject to a cash limit, the grant to the Governing Body will be similarly subject to a cash limit. No decision by the Governing Body shall commit the Department to any particular amount of grant.

32. The Department will pay grant to the Further Education colleges in monthly instalments in accordance with a funding profile that will take account of the expected expenditure needs of the Further Education sector as a whole over the year. Instalments will normally be paid through Banks Automated Clearing System Ltd. The Department will also be prepared, on written application from the college, to make advance, exceptional or ad-hoc payments as the Department sees fit.

33. Where payments are made by the Department on behalf of the college, the Department may deduct these amounts directly from the grant payable to the college in any one period.

THE PAYMENT OF CAPITAL FUNDS

34. Each year colleges will be advised of their capital allocations and the methodology of distribution. Principals/Directors will submit each year, in accordance with a timescale specified by the Department, a programme of future capital works, together with an estimate of cost broken down at project level.

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35. The conditions under which bids are made, approvals are given and funds are released will be clearly stipulated in the documentation accompanying the offers of grant, and must be met for grant aid to be paid.

36. Economic appraisals should apply to all capital expenditure decisions as per DAO (DFP) 16/97. This includes capital expenditure from colleges' own funds in addition to that allocated by the Department.

37. The following thresholds should apply:

- For bids below £100,000 (including VAT but excluding fees) colleges should complete a "Basic Steps of an Economic Appraisal" form. This should be retained on college files for inspection by the Department;
- For bids between £100,000 and £200,000 (including VAT but excluding fees) colleges should complete the "Basic Steps of an Economic Appraisal" form and submit to the Department for approval; and
- For bids above £200,000 colleges are required to complete a full economic appraisal complying with Treasury guidance. This should be submitted to the Department for approval. The principle of commensurate effort applies.

38. The Department will consider applications for major building projects in line with Treasury guidelines, giving consideration to whether these projects should be procured conventionally or under the Private Finance Initiative.

FINANCIAL MANAGEMENT

39. The Governing Body is responsible for ensuring that the college has a robust system of internal controls, including safeguards against fraud and theft. Colleges should notify the Department immediately of all cases of fraud or suspected fraud. The Governing Body shall appoint an Audit Committee to take responsibility for the appointment and terms of reference of the internal and external auditors and receive reports from them. The Audit Committee shall report annually to the Governing Body on the state of the college's finances and on the adequacy of the college's internal control systems, including details of where changes have been made.

40. In managing the financial affairs of the college, the Governing Body shall have regard to guidance provided from time to time by the Department, and in particular the Governing Body shall:

- prepare and review regularly a statement of its aims and objectives within the Development Plan for the college having regard to the resources available to it and to any requirement of guidance specified from time to time by the Department; and it shall submit these to the Department from time to time with such information as shall be required. In particular, the Governing

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Body shall regularly review the performance of the college against these objectives;

- charge fees for courses in accordance with any requirements set out by the Department. The current conditions are set out in Appendix C;
- offer financial assistance to students by way of access funds or fee remission. Financial incentives, in the nature of cash payments, are not permitted;
- charge fees for other goods and services with regard to their full economic costs, unless the college considers it appropriate to do otherwise having regard to the circumstances of the particular case. The current policy on fees and charges is set out in Appendix C;
- have regard to public procurement policies and guidelines in the procurement of goods and services in such a way as to ensure best value for money;
- take out insurance cover against risks to their fixed and other assets (including vehicles, plant and equipment), members of the Governing Body, their staff and third parties as appropriate;
- maintain a record of gifts given or received and any special payments made, including severance pay and ex-gratia payments to members of staff, together with a record of losses, whether or not within delegated powers, of cash, equipment, stores, student claims etc. A loss which exceeds the delegated authority as set out in Appendix D may only be written off with the prior approval of the Department;
- have regard to Treasury and Departmental guidelines in respect of severance pay and ex-gratia payments to members of staff and ensure that no restrictive confidentiality conditions are applied to such payments. All payments to which confidentiality conditions are applied must be reported to the Department.

41. The college shall, by 31 May each year or such other date as may be agreed, submit to the Department a budget of income and expenditure authorised by the Governing Body for the financial year beginning 1 August following, including forecasts of expected income from other bodies, in such form as the Department may require.

42. The college shall plan and conduct its financial and academic affairs so as to ensure that its total income is not less than sufficient, taking one year with another, to meet its total expenditure and that its financial solvency is maintained. It shall have discretion to create such reserves and provisions as seem to it prudent in order to manage its affairs effectively.

43. Where the Department considers that a college is not managing its affairs effectively, it shall have the right to take such corrective action, as it judges necessary. This may include, but is not limited to, a requirement on the college to produce and implement an agreed

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action plan to address the particular shortcoming or the short-term appointment of a consultant, employed by the Department, to take control of the aspect of college management which is not being performed to a satisfactory standard.

44. To facilitate financial planning and cash flow management within the Department, the college shall submit Financial Returns to the Department setting out expenditure to date and projected expenditure to year-end together with a brief report highlighting any budgetary pressures. These reports will be required in respect of the periods ending 31 October, 31 January, 30 April. In such other circumstances as the Department may determine, Financial Returns may be called for on a more regular basis.

45. The Governing Body shall provide the Department with information relating to income and expenditure in such form and at such time as the Department may require.

46. Within the college, managers at all levels should:

- have a clear view of the college's objectives and the part they play in their achievement;
- have the means to assess, and where possible, measure, outputs or performance in relation to these objectives;
- be assigned well defined responsibilities for making the best use of the resources for which they have a direct or indirect responsibility; and
- be able to access information and advice to exercise their responsibilities effectively.

College Deficits

47. In pursuit of longer-term objectives, a college's accrued expenditure may exceed its accrued income as shown in the Income and Expenditure Account in any year but subject to the following conditions:

- that the deficit represents no more than 2% of total income of the college and is covered by reserves which can be applied at the discretion of the college. If the college anticipates or incurs a deficit in excess of this figure it must contact the Department without delay;
- that where such reserves are insufficient to cover the deficit, a deficit will be incurred in no more than two consecutive years. A deficit of less than the lower of:
- 0.25% of total income as disclosed in the college's audited statement of accounts; or
- £40,000,

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will not be taken into consideration for these purposes;

- that the college should work towards clearing any accumulated deficit retained on the Income and Expenditure Account by the end of the third financial year after the year in which the deficit began to accumulate. An accumulated deficit will be considered to be cleared if it is less than the lower of:
 - 0.25% of total income: or
 - £40,000.

If a college is unable to meet these conditions, it should seek approval for an alternative in writing from the Department.

Fraud

48. The Department must be informed immediately of all cases of fraud or suspected fraud which are discovered, together with full details of the circumstances of the case and any action proposed or taken against the individual concerned, together with any steps taken to avoid recurrence.

Handling Receipts

49. The college must set out office procedures for the handling of receipts. General guidance on such procedures is set out in Appendix E.

STAFFING AND ASSOCIATED COSTS

50. The college may employ staff in such numbers and at such grades as it judges necessary to meet its statutory obligations but, in so doing, it should have regard to the principles of economy, efficiency and effectiveness.

51. Staff salaries and related costs account for a significant proportion of the college's annual recurrent expenditure and it is therefore essential that the college has a system in place for monitoring and controlling such costs for both teaching and non-teaching staff. Such a system should ensure that staff resources:

- are allocated in line with the college's strategic priorities as set out in its Development Plan;
- reflect the importance of having robust systems and procedures which underpin day-to-day college activity and comply with the Department's requirements;
- are sufficient in number but not excessive; and

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- that grading standards are met, with staff carrying out tasks appropriate to their grade and remunerated at reasonable levels.

52. In accordance with the Order the Department's approval must be sought to the terms and conditions for senior staff and such other staff of the college as the Department may direct.

ESTATES MANAGEMENT, PROPERTY ACQUISITION, DISPOSAL OF LAND AND BUILDINGS

53. The college shall manage and develop its estate having regard to guidance issued from time to time by the Department and shall comply with any requirements regarding the maintenance of data on the computerised Estates Management System at present under development. The Governing Body shall regularly review its holdings of land and buildings and shall dispose of those, which it considers are no longer needed, subject to the paragraphs of this section governing disposals of property and other assets. The college shall prepare and regularly review and update an estates strategy and maintain its assets in accordance with a maintenance plan, covering both its longer term and routine maintenance requirements.

54. Economic appraisals should apply to all capital expenditure decisions as per DAO(DFP) 16/97, unless otherwise agreed in writing to the Department. For these purposes, a rent is deemed to be capital expenditure ten times the amount of the annual rent, except where the property is subject to a lease for a fixed term of which less than 10 years remains, in which case the annual rent is to be multiplied by a factor equal to the number of years of the term remaining.

55. If the college intends to acquire an interest in or to develop or maintain any land or buildings, to pay rent or to repay debt or pay interest on any outstanding debt in respect of land or buildings:

- no transaction or development likely to affect significantly the value or ownership of such land or buildings so acquired or developed or maintained shall be entered into by the college without the prior consent of the Department;
- if the land or buildings or any interest in it, is disposed of for a consideration not wholly consisting of rent, the college shall pay to the Department:
- in cases where the land or buildings or interest was acquired and/or developed wholly with the aid of public funds, all the proceeds of the transaction (including any element in respect of intangible assets disposed of as part of the transaction), after deduction of the expenses of the transaction;
- in cases where an outstanding debt was repaid, or interest thereon paid, wholly or in part with the aid of public funds, that proportion of the proceeds (after such deduction of the expenses of the transaction) which

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corresponds to the proportion of the sum of the funds to the aggregate cost of acquisition and/or development of the property; or,

- in other cases, that proportion of the proceeds (after deduction of the expenses of the transaction) which correspond to the proportion of the aggregate cost of the acquisition and/or development which was discharged out of exchequer funds.
- if the land or buildings is let for use for activities other than education and training, the rent or an appropriate proportion thereof (after deduction of any ground rents or other charges, administration costs and any expenditure necessary to keep the land or buildings in a state to command that rent) shall be paid to the Department.

56. The Department may, subject to the agreement of the Department of Finance and Personnel, specify conditions under which the requirements set out in paragraph 55 will be waived. The present policy on waivers is set out in Appendix B of this Memorandum. Where, pursuant to such a waiver, the college uses the proceeds of sale or rent to acquire an interest in, or to develop any land or building(s), the requirements set out in paragraph 55 will apply to the funds so used.

57. In relation to the disposal of assets other than buildings or lands, e.g. equipment, furniture, vehicles, plant and machinery, colleges may dispose of such assets without permission on condition that the market value of any such asset does not exceed £15,000. The Governing Body would be permitted to retain the proceeds from such disposals provided they are applied to activities normally supported by grant. This general consent will allow governing bodies to transact business without having to seek specific consent to disposals of a minor nature (for example, trading-in a vehicle). It should be noted, however, that specific written consent would be required for any disposal with a market value above the specified sum. In disposing of Exchequer financed assets, the Governing Body should ensure it achieves the best possible price which will usually mean sale on the open market by means of public auction or tender. The retention of the proceeds from the sale of assets with a market value in excess of £15,000 is subject to written approval from the Department.

BORROWING AND LEASING

58. The college shall not, without the prior written consent of the Department, borrow from any source, give any guarantee or indemnity or create any trust or security over, or in respect of, any of its property except that the Governing Body may, without such consent, arrange an unsecured borrowing facility, provided that the maximum sum borrowed does not exceed 5% of their grant-in-aid from the Department and is used for capital expenditure purposes. The equivalent figure for recurrent expenditure purposes is 2%.

59. The Governing Body shall not, without the prior written consent of the Department, offer as security for a loan any land or property that has been provided, improved or maintained with aid of grant except where paragraph 60 below applies.

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60. The Governing Body may, without the Department's consent, arrange a borrowing facility to finance capital projects which is either unsecured or secured on the assets transferred to the college on 1 April 1998 or on the security of assets funded by the Department's grant or grant-in-aid, provided that the maximum sum borrowed does not exceed 5% of their annual grant-in-aid. Excluded from this calculation should be any grant received for capital projects or staff restructuring.

61. The Department expects Governing Bodies to explore various sources for borrowing in order to ensure the most competitive terms and rates. Colleges should consult the Department in advance about the terms of any proposed borrowing from the private sector or overseas and should not accept borrowing on terms more costly than those available to the Government without first consulting the Department of Finance and Personnel.

62. Before entering into any borrowing facility arrangement, the Governing Body must be satisfied that the following conditions can be met:

- any risks or uncertainties surrounding the borrowing and the purpose for which the sum borrowed is to be used, together with any long-term implications for the college's finances have been properly considered and analysed;
- the acquisition or activity in relation to which the borrowing is proposed will realise an appropriate rate of return, taking account of both revenue savings and generated income;
- the college will be able to repay the sum borrowed and pay interest without an increased level of funding from the Department; and
- the ability of the college to maintain financial viability will not be impaired as a result.

63. Capital and Recurrent borrowing which, when combined, exceed 5% of the college's grant-in-aid will require the prior written consent of the Department. It is a condition of this general consent that the college must inform the Department if total borrowing at any time exceeds 5% of grant-in-aid without prior permission from the Department.

64. The Department should be notified of all loans entered into, including any negotiated under the general consent described in paragraph 58 and 60 above. Details should include the amount borrowed, the purpose for which it has been borrowed, and the repayment period, the payment arrangements and details of any security given.

ACCOUNTS

65. Under Article 19 (1) of the Order, it is the duty of the Governing Body of a college to keep proper accounts and proper records in relation to the accounts. The college shall provide the Department with a copy of its unaudited accounts by the 14 September, and the Governing Body shall provide the Department with 2 copies of the audited accounts and

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financial statements in respect of the Governing Body's activities during that year by the 30 November. The accounts shall be signed by the Principal and by the Chairman or one other member of the Governing Body appointed for this purpose by the Governing Body.

66. The accounts shall cover all aspects of the college activity including those of any company established by the college.
67. The notes to the accounts shall include disclosure of the salaries and emoluments of senior post-holders of the college.
68. Failure to supply the Department with the accounts and financial statements by the due date may result in the imposition of a financial penalty through reduction in a college's grant-in-aid allocation. The college shall make reasonable arrangements to make copies of the accounts publicly available.
69. The form of the accounts shall contain a presentation of the college's accounting policies that shall state that the accounts have been prepared in such a manner as directed by the Department in accordance with the Order.
70. All financial records and documents relating to the accounts must be retained for a minimum of 7 years following the end of the financial year to which they relate.

AUDIT

71. The Governing Body shall appoint an Audit Committee in accordance with the Order and shall arrange to provide for internal and external audit in accordance with the Audit Code of Practice published by the Department and any other requirements set out by the Department. Any such requirements, which are mandatory, shall be a condition of grant under the terms of this Memorandum. Audit shall embrace all aspects of the college's activities including any college company and grants received from other Government Departments and statutory agencies.
72. The Audit Committee shall report annually to the Governing Body on the state of the college's finances and on the adequacy and effectiveness of the college's internal financial control systems, including details of where changes have been made. A copy of this report, when approved by the Governing Body, should be sent to the Department together with any additional comments or observations which the Governing Body wishes to make.
73. The Governing Body shall appoint external auditors in accordance with procedures approved by the Department; and shall prescribe the terms of reference of such auditors in accordance with guidance given by the Department.
74. The External Auditor's report, in addition to giving an opinion on the accounts as they stand, should say whether, in the auditor's opinion, grant income and non-grant income have been properly applied in accordance with the terms and conditions of grant and for the purposes approved by the Department.

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75. The Governing Body shall make arrangements for the internal audit of the college to ensure that internal control systems are effective. Such arrangements should be in accordance with guidance given by the Department.
76. The organisation providing the internal audit service must not be the same organisation providing the external audit service.
77. The Department will, from time to time, evaluate the college's internal control systems and, in the light of the outcome, carry out such other additional investigations, as the Department deems necessary. The cost, in whole or in part, of such additional investigations, may, where the circumstances so warrant, be deducted from the recurrent grant of the college.
78. The books and other documents relating to the Governing Body's accounts shall be open (at all reasonable times) to inspection by the Department and by the Comptroller and Auditor-General. The Comptroller and Auditor-General may carry out examinations into the economy, efficiency and effectiveness with which the Governing Body has used its resources in discharging its functions.
79. The college is required to maintain an auditable trail of student enrolment, attendance and achievement so that all statistics provided to the Department for funding and other purposes can be audited. The transference of data on to data returns should show a clearly defined and auditable connection.
80. The Department will determine the nature and scope of the audit of college data and the arrangements to apply. These arrangements may include the engagement of external auditors directly by the Department or, alternatively, the preparation of instructions by the Department for use by the college's external auditor.

PROVISION OF INFORMATION

81. The college shall furnish the Department with such information, as the Department requires for the purpose of the exercise of its duties and responsibilities. This information shall be of a satisfactory quality and provided in accordance with any time-scale and form set by the Department.
82. The Department will act reasonably in its requests for information, paying due regard to the ongoing work of the college, the cost of providing information and, where appropriate confidentiality. The college will endeavour to comply with all requests and timescales, especially with regard to any contribution or views sought on a Parliamentary Question or query made to the Minister.
83. If the college fails to return information required to the Department by the specified deadline, or if the information is not of satisfactory quality, the Department reserves the right to take either or both of the following courses of action:

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- to carry out such investigations as the Department deems necessary to collect the data. The cost of such investigations may, in whole or in part, be deducted from the recurrent grant of the college; or
- to use its own reasonable estimates of the data which it requires for the exercise of its duties and responsibilities.

84. If the college is overpaid grant as a result of the Department's estimates of data, as in paragraph 83 above, the Department reserves the right to recover any overpaid grant, plus interest.

BANKING ARRANGEMENTS

85. The college will operate an account with a bank or building society with an office in Northern Ireland selected by competitive tender on the basis of a fixed term agreement not exceeding 5 years. If the college has a bank account prior to the effective date of incorporation, and that bank has been selected other than by competitive tender, the college must seek tenders for provision of a banking service within the 2 years following the effective date of incorporation. Further guidance is available in Chapter 28.2 of Government Accounting Northern Ireland.

86. All grants from the Department will be paid into the college bank account and all disbursements of grant must be made direct from it.

87. The college must ensure that payments from its bank account, other than salaries and wages, are authorised by the signatures of 2 persons designated by the college, drawn from a panel of no fewer than 4 persons, one of whom must be the Principal, or in his absence, the person in charge of the college's finances.

PURCHASING

88. The college must comply with all public sector purchasing policies and requirements.

89. The college shall have regard to value for money considerations in all purchases of works, equipment, goods and services. Except where there is good reason to the contrary, contracts should normally be placed on a competitive basis. Where this is not the case, the reasons for this decision should be clearly documented. Contracts should be reviewed and renegotiated at regular intervals.

90. In a situation where colleges do not use the Government Purchasing Agency's (GPA) list of approved contractors, the following procedures and thresholds should apply:

- for expenditure less than £1,500 - minimum of 1 quotations;
- for expenditure £1,501-£10,000 - minimum 3 formal tenders;
- for expenditure £10,001-£20,000 - minimum 4 formal tenders;

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- for expenditure over £20,000 - public advertisement.

The thresholds are all inclusive of VAT. Any purchases above the European Purchasing thresholds must comply fully with Public Procurement procedures.

91. The college may from time to time wish to appoint consultants to assist the college in the exercise of a particular function or activity. The Department will require an annual return setting out details of all consultancy assignments completed during the year.

92. The college should consider how best to organise the purchasing function within the college so as to ensure value for money and compliance with best practice and legal obligations. This may include an in-house operation or a service level agreement or contract with a third party such as an Education and Library Board or the Government Purchasing Agency.

93. The Governing Body should approve a document setting out the purchasing procedures to operate within the college. This document should list those post-holders with delegated authority, specifying the types of purchases that they can authorise together with any maximum value. Staff engaged on purchasing must be properly supervised with adequate separation of duties to ensure, for example, that staff responsible for placing orders with suppliers are not also responsible for checking in delivery of goods. The procedure for the seeking, consideration and award of tenders should also be specified.

94. Colleges should pay all bills in accordance with contractual conditions. Where no such conditions exist, payments should be made within 30 days of receipt of goods or services, or on presentation of a valid invoice.

INVESTMENT

95. The Order gives colleges the power to invest surplus funds. Colleges need to be prudent in the selection of the type of investment to be made, the amount to be invested and the time over which the money is to be invested.

96. Long-term investments (investments for periods over one year) and investments of a type not associated with a major UK financial institution should be avoided.

97. The Governing Body should approve a document setting down the procedures to be used, those persons with responsibility to make investments, any maximum amounts to be invested and the types of investment to be made. This document should then be forwarded to the Department for approval. The Governing Body should be given a report at each meeting setting out the details of all current investments held by the college.

PERSONS WITH LEARNING DIFFICULTIES AND/OR DISABILITIES

98. The Disability Discrimination Act 1995 makes it unlawful to discriminate against people with disabilities in employment and in the accessing of goods, facilities and services. Although education is excluded from the access to goods, facilities and services, other college activities would fall under the legislation. Therefore activities such as conference

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facilities, college restaurants, guidance services, student unions, sports facilities open to the public, hair and beauty salons etc must comply with the legislation.

99. The Governing Body is required, as a condition of grant, to publish a disability statement and in doing so comply with any guidance issued by the Department.

100. The college must also take account of the provisions of the Code of Practice (Code of Practice for Students with a Learning Difficulty and/or Disability) giving guidance to colleges as regards provision for persons with learning difficulties and/or disabilities.

ADMINISTRATIVE IT SYSTEMS

101. Any administrative IT systems should take account of the IT strategy for the education sector and comply with the principles and standards set out in the document.

102. If the college intends to change the current system provided to support the administration of colleges (CIMFENI) it must obtain the prior approval of the Department.

STUDENTS

103. Individual Student Learning Agreements (ISLAs) are being introduced for students in line with a timetable set by the Department. It is a condition of grant that colleges comply with the timetable for the introduction of ISLAs, their format and content unless otherwise agreed by the Department.

104. In the event of the Governing Body deciding to provide financial support to a Students' Union in the college, it must ensure that the Students' Union is representative of the student body and properly constituted, that its role is clearly defined and that its finances are properly managed and accounted for. Membership of the Students' Union should be voluntary and open to all students of the college.

CONTINGENT LIABILITIES

105. The college shall not give any guarantees or indemnities incurring contingent liabilities other than in the normal course of business.

106. The Department is required to monitor and report on the liabilities of sponsored bodies.

REPAYMENT

107. The Department may require the repayment, in whole or in part, of sums paid under the provisions of the Order if any condition subject to which sums were paid is not fully complied with.

108. The Department may require the payment of interest in respect of any period during which a sum due to the Department in accordance with this or any other condition remains unpaid.

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109. The Department may withhold, suspend or reduce grant-in-aid under the following circumstances:

- failure to comply with the conditions set out in the Financial Memorandum or with any special conditions issued subsequently;
- a Ministerial Direction, or;
- failure to comply with the terms of the Vote.

INTERPRETATION

110. The Department shall resolve questions arising on the interpretation of any statement in this Memorandum after consultation with the Governing Body.

REVISION

111. The Department may from time to time revise, revoke or add to any part of this Memorandum after consultation with the colleges and its Governing Body and such bodies representing colleges as the Department considers appropriate. The college may also propose changes.

EFFECTIVE DATE

112. This Memorandum shall have effect from 1 July 2002.

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APPENDIX A

THE PLANNING AND REPORTING FRAMEWORK

The Public Expenditure Survey

1. The Government's Public Expenditure Survey process involves a rigorous scrutiny of all spending programmes to ensure that resources are being deployed in the most effective manner to achieve policy aims and the best possible value for money. Allocations for the first year can be regarded as firm while those for subsequent years (years 2 and 3 of the survey) are more tentative and will be subject to review in subsequent Surveys.

2. In the Survey, Government Departments bid to the Department of Finance and Personnel (DFP) for additional resources to support Government policies and strategic priorities, to cover rising demand for services and declare easements on services which have a reduced resource requirement, due possibly to efficiency gains, lower demand or policy changes. Bids are assessed taking account of factors such as:

- the contribution to Government's strategic objectives and what will be achieved as a result of the injection of additional resources;
- the relative priority against other bids submitted by the sponsoring Department;
- bids received from other Departments;
- the principles of Policy Appraisal and Fair Treatment (PAFT);
- implications for Targeting Social Need;
- value for money; and
- the availability of resources.

It follows, therefore, that all bids must be backed up with solid and reliable data as evidence to support the claims made within the bidding document. Decisions on the outcome of the Public Expenditure Survey are normally made in December of each year.

3. Pressures and easements emerging in the course of a financial year are considered through in-year monitoring and resources can be re-allocated in line with Departmental priorities where changes within the Department's overall budget are involved or in line with NI priorities where changes to the budgets of individual Departments are required.

Further Education

4. The following will be the annual timetable of key events in the planning framework for Further Education:

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- 1 August** - the start of the college financial year. The college should commence work on the collation of data for the funding formula and start the process of preparing its annual accounts and annual report.
- 30 November** - final date for submission of funding data, the annual report and accounts.
- May** - decisions made on the level of resource for the sector and budgets for individual colleges.
- May** - strategic briefing for colleges where Department officials:
- outline progress towards the objectives and targets set out in the Strategic Plan for the Education Service;
 - inform colleges of the level of resources being made available and the allocation to each college;
 - discuss any emerging budgetary pressures with colleges so as to inform the survey process commencing in the following April; and
 - discuss any other issues of concern.

Following this meeting each College should prepare a College Development Plan for the 3-year period commencing in August.

- 31 July** - Close of college financial year. The college should submit a copy of its unaudited accounts to the Department by 13 September.
- 30 September** - Final date for submission of the College Development Plan to the Department. The Plan should have received the prior approval of the Governing Body.

College Development Plans and Annual Reports

5. These documents play an important role within the planning framework of the sector. The Department has no approval function with regard to them but may comment on their content if it is considered necessary. Colleges should prepare their plans and reports in a common format and in accordance with any guidance issued by the Department after consultation with colleges or representative bodies.

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APPENDIX B

CIRCUMSTANCES UNDER WHICH GOVERNING BODIES MAY RETAIN RENTAL INCOME OR THE PROCEEDS OF SALE OF A CAPITAL ASSET

1. This Appendix relates to the limits and conditions referred to in paragraphs 53-57 of this Memorandum.
2. Where the Governing Body, with the Department's prior written consent, disposes of land or buildings (or engages in a sale and leaseback of an existing asset for a term of 25 years or more) the Governing Body may retain up to £200,000 of the proceeds of sale (or any premium payable on the grant of the lease) on condition that:
 - the Department approves the use to which the Governing Body proposes to apply such proceeds; and
 - such proceeds are used within 3 years of their receipt by the Governing Body on building or adaptation work, major maintenance, or the acquisition of property. Such use must still be subjected to value for money considerations and an economic appraisal. Proceeds may also be used for projects related to college/industry collaboration.
3. Where the Governing Body disposes of land or buildings for which the proceeds are more than £400,000, the Governing Body may, as an alternative to paragraph 2 and with the approval of the Department, retain up to half the proceeds for the purposes and on the conditions described in paragraph 2 of this Appendix.
4. The Governing Body may apply to the Department for approval to retain up to 100% of the proceeds of sale where they are used for capital projects that are consistent with the college estate strategy, to:
 - replace existing facilities; or
 - restructure *or extend* existing facilities which an economic appraisal suggests will produce a rate of return equal to or exceeding the Treasury Test Discount Rate, provided that -
 - where the capital cost of the project is estimated to be less than £1 million, the Governing Body carries out the necessary economic appraisal to judge for itself whether the proposal meets the criterion and assures the Department that the criterion has been met (due weight being given to any unquantifiable advantage, including academic or similar benefits). The Governing Body will still require written approval from the Department to proceed with the project; or
 - where the capital cost of the project is estimated to be £1 million or more, a full economic appraisal forms part of the Governing Body's submission to

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the Department in support of the case for up to 100% retention, and the Department's procedures for major projects are followed.

5. Proceeds may be retained for restructuring *and extension* projects not meeting the Treasury Test Discount Rate criterion only with the approval of the Department and the Department of Finance and Personnel.

Rental Income

6. The Department may permit retention of rental income where:

- the property is in commercial use of benefit to the Governing Body or to the academic community over and above the purely financial benefit of receiving an income;
- the property is used to accommodate tenants displaced from other property acquired and developed for the use of the college; or
- some different arrangement has been approved, exceptionally, by the Department in particular circumstances.

7. If the property is unlikely to be brought back into college use within 5 years, the Governing Body will be expected to dispose of that property, within such period as the Department may agree exceptionally, under the procedures set out in paragraphs 2-5 above.

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APPENDIX C

FEES, CHARGES AND INCOME

Tuition Fees

1. The college may decide on its own tuition fee policy, providing that no fees are required in respect of any student from the European Union aged under 18 years of age and who is attending a full-time Further Education course. Students aged 18 years and over attending a full-time Further Education course may also be exempt from tuition fees. Colleges should refer to Circulars FE 9/00, FE 13/01 and FE 3/02 for eligibility criteria.
2. The college may retain all income from fees, but such monies are regarded as exchequer funds and must be used for purposes covered by the Order, this Memorandum and any other requirements of the Department.

Fees (other than Tuition Fees) and Charges

3. Where the college provides a service to an external organisation or individual and which incurs costs, it is recommended that a charge should be imposed which covers the cost of providing the service. Where the benefits of charging are outweighed by the costs or where the imposition of such charges would have a detrimental effect on the purposes and aims of the college, such charges may be waived but only in carefully considered circumstances.
4. All fees and charges should be reviewed annually. A financial objective should be set for each chargeable service. The target will be the full cost recovery of providing the service unless it has been consciously decided to subsidise it, in which case the target must be consistent with that decision. Further information on fees and charges is contained in HMT's Fees and Charges Guide.

Income from European Union

5. The Government is able to offset some of the costs of further education through funding received from the European Social Fund. Colleges are required, under the terms of this Memorandum, to provide such information and comply with such conditions as the Department may impose regarding courses which might qualify for assistance under the ESF arrangements.
6. In particular, EU funded courses should not also be used to generate SPURs through the Funding Formula. Instead such courses should be recorded as Full Cost Recovery on the College MIS. However, where a College is the Project Promoter of a European Social Fund (ESF) Project, the Department will provide European Match Funding through a separate Department funding stream.

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Unconventional Financing

7. Subject to any constraints that may be imposed by legislation, the college may, and in certain circumstances is encouraged to, raise funds from sources other than public funds. In doing so, care needs to be taken to ensure that the college is not exploited for commercial purposes.

8. Before accepting any funding from a commercial or other private source, the college needs to ensure that its name will not be used to endorse any product or be associated with anything likely to cause controversy. It must also ensure that in accepting any private proposal, it does not place itself in contravention of its own aims or statutory purpose.

9. Where a public event organised under the auspices of the college is sponsored by a commercial concern, the amount and nature of commercial advertising to be displayed at the event is a matter for the Governing Body, but the principles in paragraphs 7 and 8 above should be borne in mind.

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APPENDIX D

DELEGATED AUTHORITY IN RESPECT OF LOSSES AND SPECIAL PAYMENTS

Introduction

1. The purpose of this Appendix is to provide guidance on the treatment of losses and special payments and to introduce delegated arrangements whereby amounts may be written-off without the necessity of obtaining the Department's approval.
2. The Principal (or, in the event of his long-term absence, the person identified by the Governing Body as being the Acting Principal) is the only person with the power to exercise this delegated authority. The Audit Committee and the Governing Body must be informed in writing of all instances where this authority has been exercised or where the approval of the Department is being sought to losses or special payments above the delegated limit.
3. The limits within which this delegated authority will operate are set out in paragraph 6 of this Appendix. The reason for delegating this authority is to make administrative handling of comparatively low value transactions more efficient ***but such delegation must not be interpreted as in any way diminishing the importance of write-offs.*** This Appendix does not affect the requirement that all losses and special payments should be detailed as a footnote in the college's annual accounts (except where, in a particular case, the Department indicates otherwise- see Part 3).

Losses

4. The prevention of loss is a prime objective of sound financial control and therefore all systems within the college should be designed and operated so as to prevent, as far as possible, losses of both cash and assets. Internal checks and regular supervision should ensure that any loss, which does occur, is detected as early as possible with remedial action taken as soon as possible thereafter in order to prevent a recurrence. The college asset register should be kept up to date with regular stock checks, especially of any valuable or attractive items.
5. In the event of a loss being discovered, the following action should be taken:
 - ending the loss and limiting its effect as much as possible;
 - attempting to recover the value of the loss;
 - ascertaining the cause and correcting any weakness or fault in the system of control or supervision;
 - where theft or misappropriation is known or suspected, reporting the matter immediately to the Police, the Department and the C&AG;

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- recording the loss and seeking write-off approval from the Department in any individual case where the net loss, after recoveries from insurance, etc, exceeds the delegated limits quoted in paragraph 6 of this Appendix;
- it is imperative that an amount to be written off is accurately and meticulously calculated and checked and that it includes all costs properly associated with the loss in question and excludes those not associated.

6. Details of the main types of losses and special payments which are likely to arise, and the limits above which Departmental write-off approval is required *in any single case* are as follows:

Losses

Cash Losses

Delegated Limit £5,000 (£1,000 if fraud is suspected)

- Losses by theft, fraud, arson or negligence or due to book-keeping errors;
- Physical losses of cash and counter losses;
- Losses of equivalents of cash e.g. stamps;
- overpayments of pay and allowances (see Part 1).

Stores and Property Losses

Delegated Limit £5,000 (£1,000 if fraud is suspected).

- Malicious damage;
- Fraud or theft (including items stolen during a burglary);
- Unexplained stocktaking discrepancies;
- Other causes.

In each case the amount of the loss is calculated as the cost of repair or replacement less any recoveries in respect of insurance etc.

Fruitless Payments and Constructive Losses

Delegated Limit £5,000 (£1,000 if fraud is suspected)

A payment, which is unavoidable in that the recipient is entitled to it although nothing useful is received in return, may be classed as a fruitless payment or a constructive loss. The vital distinction between a fruitless payment and a constructive loss is whether or not the liability was constructively incurred. Thus, a fruitless payment is a payment for which, strictly

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speaking, liability ought not to have been incurred, or could have been cancelled in time to avoid liability. On the other hand, a constructive loss may arise out of a payment for which liability was properly or constructively incurred or maintained- for example when stores or services are correctly ordered, delivered or provided, and are paid for as being in conformity with the order, but owing to an error of judgement, change of policy or comparable reason which cannot be attributed to a culpable cause, prove not to be needed or to be less useful than when the order was placed.

Claims Abandoned or Waived

Delegated Limit £750

Waiver of a claim implies a voluntary decision for administrative or other reason, not to present or pursue a claim that could be properly made.

Abandonment of a claim arises in any other case where a claim can properly be made, and where payment is not received. This would include:

- a claim made (or which should have been made) for services rendered, or other consideration given;
- a claim arising from an actual or believed contractual or other legal obligation of the contractor or other person (whether or not in fact pursued).

Special Payments

Compensation Payments (due under a Court Order)

Delegated Limit £750

- While prior Departmental approval is not required to the making of a payment due under a Court Order, such approval must be sought if the amount is above the delegated limit before it can be accepted as a charge against public funds.
- (**NB** In the case of an Out-of-Court settlement, the Department's prior approval must be sought **before** a payment is made. In such circumstances, the amount of the settlement should be agreed provisionally with the claimant or his legal representative in terms that make it subject to the Department's approval. Before approving the payment as a charge against public funds, the Department will wish to be satisfied, inter alia, that the college acted in good faith and in accordance with the advice of its legal advisers.)
- The legal costs of the college should be met from its recurrent budget and not regarded as part of the loss itself;
- A full report should be made to the Department in any case where the judgement of the Court carries implications of such importance that an appeal may be appropriate.

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Extra Contractual Payments and other Ex-Gratia Payments

Delegated Limit £750

- These would generally arise in circumstances where there is no legal obligation to make a payment but where there is a strong moral obligation to pay compensation for hardship or damage caused by the college or its servants.
- Ex-gratia payments to staff for the loss of, or damage, to their personal property may be made where:
 - the incident occurs in the course of the performance of official duties;
 - the articles lost or damaged are such as might reasonably be carried in the performance of those duties;
 - the loss or damage arises from the fault or carelessness on the part of the college or its agents and the member of staff is not insured.

The payment should cover either the actual cost of repairing the article or, if lost or damaged beyond repair, the value immediately before the incident, ie replacement cost less depreciation.

Recovery of Overpayments

7. Part 1 sets out the procedures for dealing with overpayments of pay and allowances. In the case of overpayments arising out of business transactions with supplier's etc, full recovery should be pursued.

Departmental Approval

8. Requests for Departmental approval to the write-off of losses or to making and charging of special payments to public funds should be accompanied by a full statement of the facts including, as applicable in each case:

- the cause;
- how discovered;
- efforts made to effect recovery;
- details of any Police involvement;

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- steps taken to avoid a recurrence, including any improvements in the systems of control;
- any disciplinary action taken or contemplated; and
- copies of any relevant documentation, including legal advice.

Where Departmental approval is required in any particular case, this should be sought without delay and in any event not later than 14 September following the end of the financial year in which the loss or special payment relates. If a loss is serious, it should be brought to the attention of Parliament as soon as possible.

Audit

9. All cases in which the write-off of a loss or special payment is being considered must be supported by full documentation within the college and any decisions clearly made and recorded in writing. The manner in which this delegated authority is exercised and the introduction of any necessary remedial action to prevent recurrences will be subject to normal scrutiny by auditors, who may comment thereon as necessary. **It is essential that a register is kept of all losses and special payments and this, together with the supporting documentation, must be made available to auditors on request.**

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APPENDIX D (PART 1)

TREATMENT OF OVERPAYMENTS OF SALARIES, WAGES AND ALLOWANCES

General

1. It is of primary importance in the prevention of overpayments that all staff concerned with the determination, computation and payment of salaries, wages and allowances (including travel and subsistence payments) should be fully conversant with any agreements, regulations, Orders or instructions which impact on remuneration. In all cases it is vital that there is adequate supervision, not only to minimise the risk of mistakes or fraud but also as a back up in case of absence.
2. Overpayments due to clerical errors, misreading of salary scales etc should cease immediately on discovery and the correct rate used in all further payments. In the case of an overpayment due to an error in the contract of service (e.g. the wrong salary rate being offered) the contract should either be varied by agreement with the employee concerned so as to incorporate the correct terms or be terminated at the earliest possible date (with the appropriate notice) and a new contract drawn up containing the correct terms.
3. In the event of the college continuing to use the Department's payroll service, an ELB payroll service or that of any other third party, it must ensure that the arrangement is formalised in a Service Level Agreement or contract which, inter alia, sets out the respective responsibilities and liabilities of both organisations in the event of an overpayment occurring.

Recovery of Overpayments

4. Overpayments involving small amounts due to minor clerical or arithmetical errors should be adjusted in the next payment.
5. In all other cases, the person overpaid should be invited to repay unless this would involve expenditure disproportionate to the amount overpaid (e.g. tracing someone who has left employment).
6. If the person is reluctant, or refuses to pay, the following will have to be established:
 - the good faith or otherwise of the recipient in relation to the amount overpaid;
 - whether repayment would cause hardship; and
 - whether the overpayment is recoverable by process of law.

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Receipt in Good Faith

7. The question of good faith involves an element of subjective judgement. The conditions governing pay, pension and allowances are seldom simple and it may therefore be unreasonable to assume that all individuals should know precisely how their pay is calculated or what factors may augment it, that they can themselves immediately discern an overpayment. A refusal to repay based on the argument that the money was received and spent in good faith should therefore be accepted unless there is a strong presumption of lack of good faith.

8. In general, therefore, the following should be applied:

- whether money has been received in good faith the recipient should still be asked to repay but if the money has been spent, no action to enforce repayment need be taken if the person is unwilling to repay voluntarily;
- similarly, if the money has been received in good faith and has not been spent but the employee has, in the belief that he is entitled to the amount in question, entered into commitments which he would not or might not otherwise have entered into, repayment need not be enforced;
- where the money has been received in good faith but has not been spent nor commitments entered into and there is no hardship, the question of recovery should be considered;
- as a general rule, in a case of good faith, if an overpayment extends back over several years and was the result of an error on the part of the employer, which could have, been avoided, the recipient should be invited to repay only the last 12 months. The overpayment amount in respect of the previous years should be submitted for write-off.

Where, however, the overpayment was of a lump sum nature or the overpayment ceased some time before discovery, the payee should be asked to repay as follows:

Time elapsed since Over-payment made (or ceased)	Amount to be recovered
Up to 1 year	Full recovery*
1-2 Years	Half*
2-3 years	One-Third*
3 or more years	No recovery

*** of the last 12 months if not a lump sum**

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Receipt in Bad Faith

9. Lack of good faith can be assumed if the person overpaid has suppressed a material fact, disclosure of which directly affected his entitlement. In such cases there may also be an element of fraudulent representation calling for disciplinary action. Again there may also be cases where the error is so obvious that no one could reasonably claim to have received the money in good faith. In other cases, however, it may be much more difficult to establish presumption of lack of good faith and the employer should bear in mind such factors as the extent to which:

- the basis upon which the person's pay etc was determined had either been explained to him or was readily accessible to him in, for example, a circular or handbook in his possession;
- the actual payments made depended upon his circumstances, changes in which he was required to notify to the college e.g. in relation to a student benefit payable by the college or if member of staff changes his car to one with a smaller cubic capacity which attracts a lower rate of mileage allowance;
- his receipts from the source of income giving rise to the overpayment tended frequently to vary.

Hardship

10. Repayment may be waived if it would cause hardship. In considering whether recovery would cause hardship, judgement should be based on hardship as distinct from inconvenience. Waiving of repayment should be treated as a cash loss and, where required, application for write-off should be made to the Department.

Recovery by Court Proceedings

11. If the case is one in which legal proceedings may be necessary, the matter should be referred for legal advice. It is often necessary at this stage to decide whether or not the mistake that led to the overpayment is one of law or one of fact.

In broad terms a mistake of *law* arises when a person, having full knowledge of the relevant facts, comes to an erroneous conclusion as to the legal effect. Thus an overpayment arising from a misconstruction of an Act of Parliament, or, in the case of individuals, misconstruction of an Award, Regulation, Pay Agreement etc is likely to be a mistake in law. This is the case even if the mistake arose by reason of a mistake or ambiguity in the construction of the relevant document since the Courts have held that such a mistake is analogous to a mistake of law. Also, it should be regarded as a mistake of law if the perpetrator of an error was not aware of the relevant law or instruction.

The test as to whether a mistake of *fact* has occurred is not that there has been a misapplication of an Act of Parliament, Award, Regulations etc but that an action has been

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taken by the paying authority which is inconsistent with the facts. Examples of mistakes of fact are:

- procedural or arithmetical mistakes, e.g. putting the right rate into payment with the wrong start date, a mistake in addition;
- computer input errors including errors on source documentation for input to computer systems, e.g. wrong dates or figures entered or keyed from forms; and
- other clerical errors or forgetfulness.

As this is often a difficult distinction to make, it is best to seek legal advice, although in the case of a small amount of money this may not be cost effective.

Collective Overpayments

12. If a group of people has been overpaid as a consequence of the same mistake, repayment would not be expected until either a. all concerned have agreed to it or b. it has been decided that there are good grounds for pressing for recovery from all affected. An exception to this may be made where there are special circumstances relating to a particular individual that places him in a different position from the other members of the group.

13. The delegated limit for write-offs of overpayments is £5,000 (as set out in paragraph 6 of the main body of Appendix D). Cases above this limit should be submitted to the Department for approval together with all necessary supporting documentation.

14. Particular care should be exercised in the investigation of the circumstances surrounding any instances of overpayments made to staff who themselves have been involved in the determination, computation or payment of the amounts involved or in the development of the provisions under which the payment was made. Although, as a general rule, staff should not be in a position to authorise payments to themselves, every effort should be made to recover the amount in such cases and if write-off is eventually recommended, the approval of the Department should be obtained irrespective of the amount.

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APPENDIX D (PART 2)

FRAUD/MISAPPROPRIATION/THEFT

Reporting Criminal Cases to the Police and Disciplinary Action

1. The purpose of this part of the Appendix is to provide guidance on Police reporting and/or disciplinary action requirements in cases involving fraud, theft or misappropriation of funds or property.
2. In certain circumstances, it can be an offence against Section 5 of the Criminal Law Act (Northern Ireland) 1967 not to report certain offences to the Police, but failure to report offences involving the loss of property ***where the property has been recovered, or compensation paid***, will not normally be an offence.

Public Funds or Property

3. This section of the Appendix is primarily concerned with the responsibility of the college in relation to theft or misappropriation of public funds or property purchased with public funds. Where it is thought that such theft or misappropriation has occurred or that any other offence involving public money or property has been committed, the Police should be informed. This should be done whether the suspect is an employee or a member of the general public. The full or partial recovery of the loss does not affect this duty. It is for the appropriate prosecuting authority to consider whether or not to prosecute. It would be only in the most exceptional circumstances and with the prior agreement of the Department (and possibly after taking legal advice) that it should be decided not to inform the Police.

Non-Public Funds or Property

4. Where an employee misappropriates or steals money collected from or property belonging to the public, the college should act on the principle that an employer is liable for torts committed by his employee within the scope of his employment.
5. Where public funds or property are not involved, it may be possible to refrain from informing the Police where recovery has been made or compensation paid, but legal advice should always be sought before deciding not to inform the Police.
6. In some instances, sums of non-public funds may come into the possession of some employees in the course of their duties and losses of these funds could have implications for public funds (see paragraph 4 above). The college should therefore satisfy itself that its general arrangements for handling and recording any unofficial funds provide the necessary safeguards.
7. The Department must be informed immediately of all cases of fraud or suspected fraud, which are discovered, together with full details of the circumstances of the case and any action proposed or taken against the individual concerned.

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Disciplinary Action

8. The degree of disciplinary action to be taken against an employee who commits fraud will depend on the seriousness of the crime but, in general, the Department would expect disciplinary action to be taken in all such cases.

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APPENDIX D (PART 3)

NOTATION OF LOSSES IN ANNUAL ACCOUNTS

1. The following arrangements will apply with regard to the notation of losses and special payments in the annual accounts.

2. **Individual Losses up to £1,000**

- There is no need to note losses and special payments where the total for the year does not exceed £1,000.
- Where total losses in a year exceed £1,000 but no one individual loss exceeds £1,000, the accounts should contain a simple footnote, for example:-

“Losses and Special Payments **£1,500**

There were 8 minor cases of losses written-off during the year.”

3. **Individual Losses Exceeding £1,000**

Any individual losses/special payments that exceed £1,000 require a separate footnote in the accounts, with a brief explanation, for example:

“Losses and Special Payments **£4,500**

**Ex-Gratia payment- out-of-court
settlement to ex-staff member** **£2,500**

Store losses written-off due to flooding **£2,000.”**

4. **Combined Notations**

Where total losses in a year exceed £1,000 and include one or more individual loss above £1,000, then the total should be noted and explanations given as in the case of paragraph 3 above, for example:

“Losses and Special Payments **£5,200**

**Ex-Gratia payment- out-of-court
settlement to ex-staff member** **£2,500**

Store losses written-off due to flooding **£2,000**

Other minor losses (5cases) **£700.”**

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The requirement to seek Departmental approval for losses above the delegated limits in Appendix 4 of this document still stands.

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APPENDIX E

HANDLING OF RECEIPTS

Separation of Duties

1. Whenever possible, the duty of receiving money should be performed by officers other than those whose function it is to initiate, handle or account for the transaction giving rise to the receipts.

Postal Receipts

2. Post that may contain remittances should be safeguarded from the time of delivery. It should be opened promptly and, wherever possible, by officers working under direct supervision or in pairs. Staff should be changed frequently. Crossing stamps should be provided to enable cheques, postal orders etc. to be crossed immediately. A machine or written record of postal receipts should be maintained and the opening officers concerned should authenticate each day's entries.

3. Receipts should be passed as soon as possible to the cash officer and credited to the appropriate bank account daily, but if delay is unavoidable they should be kept in safe custody. Cheques etc. should never be passed from branch to branch. If it is necessary to ask initiating branches to "accept" (i.e. to check their correctness and classify them for credit to the accounts), this should be done on the basis of giving particulars of the receipts.

Receipts Handed In

4. Receipts handed in, for example over the counter, should be similarly safeguarded following the arrangements set out in paragraph 3 above.

Acknowledgement of Receipts

5. Cash, whether received by post or in some other way, should be acknowledged on authorised receipt forms with serially numbered counterfoils or carbon copies. Stocks of receipts should be treated as accountable documents. Unused stock should be returned at the end of the day to a supervising officer and should be kept under lock and key. A system of checking receipts and supporting documents and stocks of unused receipt forms should be incorporated into the accounting routine of the college.

6. Receipts by cheque or credit transfer, whether automated or paper, should be acknowledged only at the request of the person making the payment or if it is necessary to qualify the receipt (see paragraph 8 below). Any payable instrument received by the college bearing a bold letter "R" close to the £ sign will have on the back a form of receipt which needs to be completed before the cheque is paid in to the college's bank account.

Acceptance of Cheques

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7. A cheque drawn otherwise than by the debtor, i.e. an endorsed cheque, should not be accepted in settlement of a debt unless the college is assured of the bona fides of the person presenting it. This applies in particular in the case of a cheque marked "not negotiable".
8. It should be noted that an unqualified acceptance of a cheque for an amount less than that claimed may entail a loss of the legal rights if the amount claimed is not a liquidated amount indisputably due from the debtor. Where there is a cause for doubt, a receipt should be issued using suitably qualified wording in order to preserve the college's legal rights, but clearance of the cheque should not normally be deferred.
9. Cheques payable to the college do not in general require to be endorsed for payment into a bank account. In the case of a cheque not correctly drawn in favour of the college, even if obviously intended for it, the need for endorsement may depend on the attitude of the bank. Where possible, the college should reduce the risk of personal cheques being dishonoured by requiring them to be supported by a valid cheque card or uniform Eurocheque card. The current limits and conditions applicable to this facility are specified on the card.

Lodgement of Receipts

10. Except where casual or trifling in amount, cash receipts should not normally be used to meet expenditure. However, if cash is retained it should be debited as imprests to the cash officer, the corresponding credits being to another ledger account entitled to the receipts concerned.

The college is responsible for lodging receipts as quickly as possible to the appropriate account. This is to ensure that money becomes available at the earliest opportunity to reduce the borrowing requirement.

11. The normal procedure for prompt lodgement of receipts assumes prompt and efficient provision of what is paid for. If, therefore, at the time of application for a service, the college foresees a significant delay in providing it, it should consider returning the payment and inviting re-application later. If the receipt has already been lodged, it may in such circumstances be refunded.
12. Where a sub-accountant operates a bank account, receipts should be paid into the account promptly to ensure early clearance of cheques. The bank's standard paying-in slip should be used. The sub-accountant should issue standing instructions to the bank to transfer without delay any balance above a minimum level to meet immediate local requirements to the appropriate account.
13. When the sub-accountant does not operate a bank account, the college should arrange with a local branch of a clearing bank for the acceptance and transmission of receipts to the appropriate college account. In such cases, the sub-accountant should notify his headquarters of each remittance to be expected. With the automation of the credit clearing, pre-printed bank giro credit vouchers are required for this purpose. The college is responsible for providing these documents, and may seek guidance on them through The

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Stationery Office who are aware of the full technical requirements both for paper quality and for magnetic ink character recognition details.