

ECU response to the Scottish Code of Good HE Governance consultation

Equality Challenge Unit (ECU) is pleased to have been invited to comment on the draft Good HE Governance code. The code has the capacity to assist the governing bodies of Scotland's higher education institutions (HEIs) to embed equality and diversity in governance, alongside other core principles, so that they can effectively guide their institutions in advancing equality for students and staff.

Introduced in 2011, the Scottish specific duties of the Equality Act 2010 public sector equality duty brought in a new set of requirements for HEIs. With these requiring institutions to take action across their operation and set and achieve demonstrable outcomes, there is now more than ever a clear role for governing bodies to have oversight of equality. The timing of the code therefore makes inclusion of robust guidance on equality and diversity all the more important.

The equality duty of the governing body is not simply about legislative compliance: just as it is for the governing body to develop and agree the institutional mission, so it is for them to establish a vision for equality, and to move the agenda beyond compliance to an approach that ensures the richness and diversity of society are reflected and celebrated within the institution. Many have already taken a central role in this respect, and it is important this code builds on this work.

ECU is pleased to see the draft code includes requirements around observing good practice in relation to equality and diversity, and gives specific attention to the issue of governing body diversity. However, we consider that there are a number of points where the guidelines could be strengthened to provide greater support to governing bodies in meeting both their responsibilities.

Our response suggests ways in which relevant sections of the guidelines might be expanded, developed from our previous work in this area. We have drawn on our handbook for governors (see <http://www.ecu.ac.uk/publications/governing-bodies-equality-and-diversity/>), but have added more recent and Scotland-specific detail on equality law. Our ongoing mainstreaming programme for Scottish HEIs has also informed our response - the participation of governors in the institutional teams from the University of Edinburgh, Heriot Watt University and Robert Gordon University has revealed what the challenges can be for governing bodies in Scotland and what action can be taken. Our response reflects this learning, and includes some examples of practice developed by participants.

ECU is currently developing a programme of work in collaboration with the Committee for University Chairs (CUC) and Leadership Foundation for Higher Education (LFHE), which will further support this code. This includes supporting the CUC on their new guidance for governors which is currently being drafted.

1. Responsibilities of governing bodies under equality law

Higher education institutions (HEIs) must comply with the Equality Act 2010. This encompasses individual rights for staff and students, as well as the proactive public sector equality duty (PSED). Governing bodies are responsible for ensuring their institutions comply with the Act and meet the PSED, which requires due regard to the need to:

- = eliminate discrimination, harassment and victimisation
- = advance equality of opportunity
- = foster good relations

for those with the following protected characteristics:

- = age
- = disability
- = gender reassignment
- = pregnancy and maternity
- = race
- = religion or belief (including lack of belief)
- = sex
- = sexual orientation

This applies to all aspects of an institution's activities, for both staff and students.

In Scotland, there are Scottish specific duties underpinning this general duty, for which governing bodies are also ultimately accountable. These are procedural requirements which set out a framework for making progress on the general duty, and include:

- = Mainstreaming equality (first report by 30 April 2013)
- = Setting equality outcomes (first set by 30 April 2013)
- = Conducting equality impact assessment (EIA) of policies, practices and key decisions (ongoing)
- = Collecting and using monitoring data on the protected characteristics of staff (ongoing)
- = Publishing a statement on equal pay (first statement by 30 April 2013)
- = Considering equality in procurement practices (ongoing)

For further details see:

<http://www.ecu.ac.uk/publications/the-public-sector-equality-duty-specific-duties-for-scotland>

It is critical that governing bodies are clear on their role in overseeing meeting these duties and put robust systems in place to seek assurances from the executive that they are being met.

Recommendations:

1. Make explicit reference in Principle 1 to the responsibilities of the governing body to ensure that their institution is compliant with the Equality Act 2010 and public sector equality duty and Scottish specific duties.

It would be helpful to include further details of what the specific duties entail in the supporting guidelines, either at Principle 1 or at Principle 2 where other legal obligations are detailed.

Good practice example

One Scottish governing body has elected one of its members as an equality and diversity champion. This member has taken an active role in the development of the institution's equality outcomes and mainstreaming equality scheme, through working with the university's E&D management group. He will continue to keep the governing body updated on progress.

2. List the Equality Act 2010 and public sector equality duty and Scottish specific duties within the legal responsibilities that the Secretary is required to provide guidance on to governing bodies in Principle 13.

Good practice example

The university secretary in one Scottish HEI delivered a presentation to Court on the institution's obligations under the Equality Act and Scottish specific duties. The secretary is now developing follow-on sessions for the Court's away day.

2. Assurance and monitoring performance on equality

To meet legislative requirements, the governing body need to ensure it can satisfy itself that its equality policy, strategy or equivalent is being implemented effectively and progress is being made.

Equality is also a matter of risk management. Unlawful discrimination and inequalities can have a significant impact on staff and campus relations, undermine the recruitment of the best staff and students, cost money in terms of litigation, lead to negative media reporting, and – perhaps most significantly – have subtle and pervasive impact on an institution's reputation.

There is a particular need for governing bodies to consider how performance on equality outcomes, mainstreaming and equality impact assessment will be assured. Governors will have shaped and approved their institution's first set of equality outcomes, published in April. These set out the institution's priorities for equality and diversity for the coming four years and, by law, require monitoring and reporting on progress by April 2015, and subsequently April 2017. Establishing appropriate indicators of success, or key performance indicators (KPIs), as well as a structure for annual reporting and review of progress on outcomes is critical.

Added to this, HEIs will need to report on progress in mainstreaming equality across their functions for this second time in April 2017, so they will need to be able to demonstrate progress. Conducting equality impact assessment is a further ongoing duty which requires assurance. Ensuring that it has taken place in a meaningful way during strategy and policy development can assure governors that equality has been considered and guard against risk. The governing body should also conduct assessments of its own formulation of policy where relevant.

Recommendations:

1. Include further supporting guidelines on assurance and performance monitoring in relation to equality within Principle 5.

We would suggest including information on:

- = Establishing a reporting system and effectively scrutinising equality reports
- = Developing equality KPIs, particularly for equality outcomes
- = Using equality impact assessment as an assurance mechanism
- = Including equality in risk management systems
- = Ensuring equality responsibilities are put into practice by committees

Good practice examples

Annual reports

Most institutions have committed to reporting on progress on their equality outcomes to their governing bodies annually, in addition to meeting the legal requirement to publish progress biennially. Effective scrutiny of these reports, and of others relating to mainstreaming or wider equality strategy, is crucial.

One university commits, in its equality outcome scheme, to review its equality outcomes and underpinning action plan on a biennial basis, reporting progress to its University Court. The Court will scrutinise the report to satisfy itself that the duties are being met.

Equality KPIs

Many HEIs have been using equality KPIs for some time. Some identify specific equality KPIs that align to their institutional mission, while some develop supporting indicators for their established high-level KPIs. It is important for HEIs to revisit, refine and add to any existing KPIs to ensure they can measure progress on their equality outcomes and mainstreaming. ECU's annual statistical reports on staff and student populations provide national data which can assist with benchmarking for quantitative KPIs:

<http://www.ecu.ac.uk/publications/equality-in-he-stats-2012>

Example KPIs:

- = Proportion of full-time undergraduate entrants, by reference to age, gender, disability and ethnicity.
- = Student satisfaction survey analysed by ethnicity, disability and gender.
- = Benchmarked data on equality and diversity of the staff body.

Equality impact assessment (EIA)

One governing body has made a small, but significant, change to its formal committee cover sheet to enable the University Court and other formal committees to assess whether due consideration has been given to equality impact. This will enable a record to be kept of the outcomes of EIA across the committee structure.

Risk

Some institutions include an assessment of risk in their annual equality report to the governing body. Others include equality in the institution's overall risk register. One institution's risk register includes the following:

'Description:

- = Failure to embed equality and diversity at the heart of all the university's activities could lead to a loss of credibility and a reduced ability to attract and retain staff and students.
- = Failure to meet legal requirements could lead to adverse media exposure.'

Committees

One Chair of Governors reported that it is useful if the terms of reference of all key decision-making bodies and committees of governing bodies automatically include clear equality responsibilities, including impact assessment and mainstreaming. This ensures that, where relevant, issues of equality will be taken into account during the course of normal business.

Another governing body established a high-level, equality governance and management committee in response to the Scottish specific duties. The body will take both strategic and management responsibility for equality and ensure that the university meets its legal obligations. It will report directly to Court.

3. Appointing Heads of Institutions

ECU is pleased to see a requirement for appointments to involve consultation with staff and student members of the governing body. However, research has confirmed that the recruitment process tends to draw on a narrow pool of people¹. Appointing to these leadership roles involves considering diversity so as to draw on a wider pool of candidates, as well as ensuring the process is legally compliant.

Recommendations:

- 1. Advise governing bodies on the importance of transparency in the recruitment and appointment process for Heads of Institutions and the merits of drawing from a wide pool.**
- 2. When using executive search firms, require that they demonstrate how they will consider equality and diversity in their search and ensure they are recruiting from a broad pool.**

In the supporting guidelines suggestions could be made around, for example, equality and diversity training for members of interview panels – including governors – and clear appointments processes, which can facilitate open and transparent decision-making.

¹ See <http://www.ecu.ac.uk/publications/governing-bodies-equality-and-diversity-research-report-2009/>

4. Governor's induction and development

For assurance and accountability for equality to be fulfilled, governors need to understand what the institutional equality strategy and policies are, and the context in which they are being implemented. New members will therefore require a full knowledge of the governing body's responsibilities in relation to equality, and also the content of the institution's equality strategy and policies (equality outcomes, mainstreaming report and equal pay statement and details of the EIA process in place). As the Equality Act and specific duty requirements are relatively new, existing members may also benefit from further development in this area.

Recommendations:

1. Include explicit reference in Principle 12 to the need to include the institution's equality strategy or equivalent in new member's inductions.

2. Emphasise the need for ongoing development opportunities for existing members in relation to equality in Principle 12.

Good practice example

One university commits to the following in its equality and diversity policy:

'Governors will devote time to the development of their own knowledge, understanding and practices to promote and achieve equality and respect for diversity and will see such development as one test of their effectiveness.'

5. Diversity of the governing body

It is recognised across the UK that diversity of governing bodies is an area which needs further attention. Data are limited, but anecdotally governors are disproportionately white, male and from an older demographic.

Previous ECU research in 2008 with Cranfield University² confirmed a general acknowledgement of the need for governing bodies to reflect the community they serve in the broadest sense. The value of this diversity is often expressed in terms of a governing body being more robust, and more informed and in touch with social and commercial concerns, if it is able to draw on a diverse range of views. It is more likely to be able to do this if the governors are drawn from a diverse demographic group of people of different backgrounds and ages. As representatives of the group determining institutional mission and policy, governors face important issues of perception and reputation in terms of being seen to be broadly representative of the staff and student population, and possibly also the wider community.

However, this research also revealed the practical difficulties of recruiting a diverse governing body, particularly in relation to race, gender and age. Given the demands on governors in terms of increased accountability and time commitment, combined with a need for specific skills and experience, candidates for governor roles are often retired, leading to recruitment from a limited pool in terms of age.

² See <http://www.ecu.ac.uk/publications/governing-bodies-equality-and-diversity-research-report-2009/>

While there are no immediate solutions, governing bodies need actively to be thinking about how they might improve their diversity. ECU is therefore pleased to see that the draft code includes a requirement to evaluate the balance of skills and experience among members to inform recruitment, and establish goals and policies in regards to the balance in terms of equality and diversity.

Having quotas for specific protected characteristics (equality groups) such as women can lead to tokenistic appointments. To help increase diversity, we would instead suggest that the guidelines be more specific in terms of requiring governing bodies to set goals to increase representation of protected groups where underrepresentation is identified.

Furthermore, although the introduction alludes to ‘broader measures to support court members with caring responsibilities’, these do not appear to be fully articulated in the guidelines, so there is opportunity to expand on this element, particularly in relation to remuneration, to support governing bodies in this regard.

Research has suggested that remuneration of governors can help to attract potential members with work commitments and caring responsibilities and therefore assist in attracting a greater diversity of ages, including younger members, and more women onto governing bodies³. ECU is therefore pleased to see allowance for remuneration in the supporting guidelines for Principles 9.

However, although the introduction suggests the intention of these guidelines is to ‘enable participation by members from diverse backgrounds’, and reference to caring responsibilities is made, there is no explicit mention within the guidelines themselves of why or how remuneration can encourage those from underrepresented protected characteristic groups to become governors, such as younger or disabled or female candidates. More content regarding this could assist institutions in implementing these guidelines to increase diversity where appropriate.

Recommendations:

1. Provide more specific guidelines around what is expected in terms of ‘goals’, for example, requiring a focus on increasing representation of underrepresented protected characteristic groups.

Good practice example

Some institutions have set equality outcomes relating to increasing diversity, for example:

‘The profile of University Court and Academic Council will become increasingly diverse as measured by ‘% of population by protected characteristic of the University Court and Academic Council’.

‘Membership of the Court is broadened to include previously underrepresented groups’

³ See <http://www.ecu.ac.uk/publications/governing-bodies-equality-and-diversity-research-report-2009/>

2. Include more guidance on how governing bodies can look to address underrepresentation and increase diversity.

Good practice examples

Building pools for future through more active involvement of alumni

With increasing proportions of women and BME undergraduates participating in higher education, alumni can provide a potentially diverse pool for recruitment. Alumni may also offer good opportunities for recruiting younger board members.

Defining the job description inclusively to attract a diverse range of candidates:

Consideration should be given to the actual skills required, and how job descriptions can be framed in a way that will open the door to a wider pool of potential candidates. For instance, people who have required skills may not have a traditional academic background and may not apply to be governors if they do not think the job description matches their skills.

Wide and targeted advertisement

In 2011, a university nominations committee decided it needed to increase the diversity of its board. A proposal for targeted recruitment activity was put to the Court and agreed. Contact was then made with local BME and women's organisations and groups, leading to the appointment of a black woman. Her appointment has brought a rich new perspective to the Court. The process also had the benefit of raising awareness about the university.

Ensuring elected or nominated governors are drawn from diverse pools

It may be appropriate for there to be a requirement that elections or nominations be carried out in a way that acknowledges the importance of equality and diversity. This could be done, for example, by ensuring those responsible for the process are aware of the desirability of ensuring a diverse pool of potential candidates.

3. Include further guidelines on how remuneration can be used in particular cases to attract underrepresented protected characteristic groups, perhaps including an example.

6. Whistleblowing

The inclusion of guidance on good practice in cases of injustice and discrimination against individuals in the draft code is welcome. Governors are often called upon to adjudicate in grievances and appeals which may identify equality issues, directly or indirectly. For example, if a complaint is made by a student with a known mental health impairment, which amounts to a disability, consideration will need to be given to how the complaint is handled to take account of the disability. The extent to which the institution put in place reasonable adjustments to support the student may also need to be taken into account in the appeal (if relevant), even though the appeal itself may relate to something quite different. Therefore, it would be helpful to make specific mention of how governors will need to be ready to engage with, and adjudicate on, cases of discrimination and other unlawful treatment related to equality.

Recommendations:

1. Include specific reference to unlawful discrimination, harassment and victimisation on the grounds of equality within Annex A.