

the scottish code of

# GOOD HE GOVERNANCE

## Consultation on the development of a new Scottish Code of Good HE Governance - Issues Paper

November 2012

### Introduction

In February 2012 the Report of the Review of Higher Education Governance (referred to as “the Report” hereafter), chaired by Professor Ferdinand von Prondzynski, Principal, Robert Gordon University, was published.

Subsequently, the Committee of Scottish Chairs established a Steering Group to oversee the drafting of a Scottish Code of Good Higher Education Governance (hereafter referred to as the “Scottish Code”). A copy of the Terms of Reference of the Steering Group is attached for information (**Appendix A**). The Chairs have appointed two former university secretaries (Mr Kevin Clarke, Stirling and Dr Peter West, Strathclyde) to assist the Steering Group in the preparation of a new Code of Good Practice for Scottish Institutions. In this context it has been agreed that a wide-ranging consultation should take place with key stakeholders including the HE institutions, staff and students.

In addition to meetings with representatives at national level, Mr Clarke and Dr West will individually visit each institution to discuss key issues with members of governing bodies, senior management, staff and students. The Steering Group has prepared an issues paper to facilitate these consultations. This takes account of the Report, the CUC Code and international evidence of best practice.

## Context

Currently, Scottish HEIs observe the UK CUC Governance Code of Practice (hereafter referred to as “the existing UK Code”) which was published in 2004 and revised in 2009. It is currently under review throughout the UK but remains a key document in any discussion of governance. The existing UK Code is observed by all HEIs in the UK, but there are variations of approach in different nations. In England, compliance with the Code, on a “comply or explain” basis, is a condition of grant. This has not been the case in Scotland although SFC has accepted the existing UK Code as representing an example of the type of good practice that it requires institutions’ governing bodies to strive for as a condition of grant.

The Report has highlighted some major issues which have generated robust debate and it is acknowledged that it is timely to address these. The majority of the Report’s recommendations have proved uncontroversial and will be incorporated in the new Scottish Code. They will help ensure that students and staff continue to have an effective say in the governance of universities. Some of the proposed solutions have proved controversial, however. Accordingly, in order to focus discussion in the consultation meetings this paper addresses those aspects of the Report which have generated concern amongst different “stakeholder” groups. The following section highlights those issues and raises a number of key questions. The list is not intended to be exhaustive and it is anticipated that other issues may be raised during consultation visits.

Some of the Report’s recommendations can only be implemented by revision to the statutory instruments of governance which, in some cases, might require primary legislation. Accordingly, this paper seeks views on ways of addressing these issues in a non-statutory way so as to enhance governance.

It is recognised that good governance is constantly evolving and that individual institutions will have developed innovative ways of improving both accountability and transparency. It is anticipated that examples of innovative approaches to the issues raised by the Report, which have been demonstrated to work effectively in a Scottish context, will emerge during the consultations as examples of good practice. The recommendations in the Report, as the Cabinet Secretary put it in his statement to Parliament, will be adapted as necessary to reflect existing good practice. The overall aim of the exercise is to provide a Scottish Code of effective governance which will place governance across the diverse range of Scottish institutions in an internationally-leading position.

## Consultation Issues

### Academic Freedom (Recommendation 2.4)

*“A definition of academic freedom should be incorporated in the statute governing higher education, based on the definition contained in Ireland’s Universities Act 1997, and applying to “relevant persons under the existing 2005 Act.”*

*“The panel recommends that Scottish Universities and HEIs should adopt a similar approach [to the Trinity College Dublin policy on academic freedom] and that each institution should adopt through appropriate internal processes, and present to the SFC, a statement on the implementation of the statutory protection of academic freedom.”*

### Background

The current position is that all institutions are covered by section 26 of the Further and Higher Education (Scotland) Act 2005, which provides that universities must have regard to the desirability of ensuring the academic freedom of relevant persons (e.g. those involved in teaching and research). Academic freedom includes the freedom to hold and express an opinion, question and test established ideas and received wisdom and present controversial or unpopular points of view. The Universities were involved in drafting this Act as were the trades unions.

The Irish definition is that “a member of the academic staff... shall have the freedom, within the law, in his or her teaching, research and any other activities in or outside the university, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions and shall not be disadvantaged, or subject to less favourable treatment by the university, for the freedom of that expression.”

#### Question:

**Is the present Act failing to achieve its objective of ensuring academic freedom? If so, would the Irish wording be preferable to the present Scottish wording?**

The Trinity College Dublin policy, which institutions are asked to look to as a model in preparing statements on the implementation of academic freedom, sees the following as potential threats to academic freedom:

- Strategic planning, particularly relating to research (e.g. requiring staff to participate in research activities against their better judgement);
- Measurement of performance in research, including allocation of resources based on meeting targets for research productivity;
- Changes in university governance (e.g. hierarchical rather than collegiate models);
- State control through funding mechanisms;
- Academic tenure and fixed term contracts (e.g. fixed term contracts limiting academics' opportunity to develop particular lines of intellectual enquiry).

The College's policy extends the reach of "academic freedom" well beyond the traditionally accepted limits, and beyond activities relating to teaching and research. The report gives no evidence of any other institutions having followed the College's lead. Neither the existing UK Code nor its Australian equivalent refers to academic freedom.

#### Question:

**Is there a case for requiring each institution to adopt a policy on academic freedom similar to that of Trinity College Dublin and to present it to the Scottish Funding Council?**

#### Meetings in public (Recommendation 4)

*"As the governing body has a key responsibility of ensuring public confidence and transparency, the panel recommends that meetings of governing bodies should normally be held in public unless the matters under consideration are deemed to be of a confidential or commercially sensitive nature; these exceptional matters should be established through clear guidelines."*

The principle of openness and transparency in the operation of governing bodies is well established and accepted throughout Scottish Higher Education. The existing UK Code suggests in sections 2.58-2.60 that the agenda, draft minutes if cleared by the chair and the papers

considered at meetings should be available for inspection by staff and students, except for commercially sensitive matters and those affecting individuals. Good practice might include placing minutes on the internet, reporting decisions in newsletters or other regularly circulated media, and ensuring that the annual report and accounts are widely circulated both within and outside the institution. The existing UK Code recommends that all institutions consider how best to ensure that the public, particularly the local community, have the opportunity to comment on matters that concern them. It points out that many institutions have annual meetings with representatives of the community and suggests that annual reports should be posted on the web.

Each institution has developed its own methods of engagement and it is hoped, in the course of the meetings with each Scottish institution, to find examples of good practice to quote in the draft Scottish Code.

Making meetings of governing bodies open to the public would be one method of achieving openness and transparency, but it would change the nature of meetings and, some have argued, might inhibit discussion.

#### Question:

**Is enough being done in all cases to encourage openness and transparency, or should further measures, including public meetings, be considered?**

### The Appraisal of the Principal (Recommendation 3.1)

*“We also recommend that the appraisal of Principals should involve external governing board members, staff and students.”*

The context of this proposal is that the panel considered recommending that Principals should be elected but finally settled on arguing for students and staff to be represented on appointment panels (for which there are precedents in the Scottish institutions) and in their appraisal.

The existing UK Code, in its statement of the role of the governing body, makes the appointment of the Principal and putting in place arrangements for the monitoring of the individual’s performance one of its primary responsibilities. It assumes that the setting of the Principal’s salary should

be one of the responsibilities of the Remuneration Committee, whose membership will include the chair of the governing body, at least three other lay members of Court and the lay treasurer, where such a position exists, and this is the normal practice in Scottish institutions. The Australian governance guide makes the appointment and performance monitoring of the Vice Chancellor the first primary responsibility of a governing body.

In at least one Scottish university, the chair of the Remuneration Committee informally consults student and staff members of Court about the Principal's performance before the annual appraisal takes place and reports the outcome to the Committee. Formalising such a mechanism and suggesting it as best practice for the sector would be one way of addressing the panel's recommendation.

**Question:**

**Should students and staff be involved in the appraisal of the Principal? If so, how?**

### **Membership of the Remuneration Committee (Recommendation 3.2 part 1)**

*“The panel further recommends that remuneration committees should include staff and student members.”*

As noted above, the existing UK Code envisages only lay members forming the Remuneration Committee for its consideration of the Principal's salary and performance. It states that the committee must seek comparative information on salaries and other benefits and conditions of service in the higher education sector and points to a database of such information, held by CUC and available only to chairs of governing bodies. Much of the information used by remuneration committees is provided to them on a confidential basis, though the existing UK Code proposes that the remuneration committees' reports to governing bodies should provide sufficient detail of the broad criteria and policies against which decisions have been made.

When student representation on university committees was established, an agreement between the CVCP (Universities UK's predecessor) and the NUS was reached that students would not be involved in discussion of the personal affairs of staff. Such “reserved areas” of business are still observed in many cases.

**Question:**

**Should remuneration committee membership be widened to include staff and students?**

**Remuneration of the Principal and Senior University Officers (Recommendation 3.2)**

*“Further percentage increases beyond those awarded to staff in general should not take place until existing processes have been reviewed and, if appropriate, amended.”*

*“...Any payments that may be perceived as bonuses are either abolished or at least transparently awarded and brought into line with the scale of “contribution payments” available to on-scale staff.”*

*“... The basis on which pay is calculated should be published.”*

*“...We recommend that the Scottish Government investigates whether the UK Framework Agreement might be extended north of the border to include all staff including principals.”*

*“... There should be a standard format for reporting senior officer pay, and the SFC should publish these figures annually.”*

The context for these recommendations, as stated in the report, is that the pay of this group of staff is perceived to have increased more than that of other groups of staff, at least until the onset of the recession in 2008-9, raising questions about the transparency and robustness of the processes for determining it.

As noted earlier, the existing UK Code recommends that Remuneration Committees should take account of the salaries paid to similar staff in similar institutions, reflecting the fact that all UK universities compete in the same market to recruit and retain the most senior staff. It further recommends that the Committee’s reports to the governing body should provide the sort of detail sought by the panel.

The UK Framework Agreement does not extend to staff beyond the minimum salary point for professorial staff. It is an agreement reached between the Universities and Colleges Employers Association (UCEA) and all of the trades unions in higher education, and any extension of the Agreement falls outside the scope of a Code of Practice.

### Questions:

**Do the present arrangements in your university for setting the pay of Principals and Senior Officers and reporting the outcome meet the recommendations of the existing UK Code?**

**Should the CUC guidance on this matter be changed in the new Scottish Code?**

**Should the salaries of senior officers be published annually by SFC, as already happens in respect of Principals?**

## Chairing of Governing Bodies (Recommendation 4.1)

*“The chair of the governing body should be elected, thus reflecting the democratic ideal of Scottish higher education.”*

The governing instruments of Scotland’s universities make provision for different ways of choosing the chair of the governing body. A Code of Good Practice cannot alter what is provided by statute or other instrument, and thus the introduction of a requirement for the election of a chair by specific mechanisms lies outside the scope of a new Scottish Code.

Nevertheless, it is clearly important that the chair of a governing body be seen to command confidence among a wide range of stakeholders, including staff and students. Equally, it is essential that the chair also command the confidence of the governing body over which he or she presides.

The existing UK Code requires that, when selecting a new chair, a full job specification should be produced and that vacancies should be published widely both within and outside the institution.



**Questions:**

**Do you think your current arrangements for appointing the chair of the governing body are effective in being sufficiently rigorous and transparent?**

**Taking account of your institution's governing instruments are there ways you wish to propose to enhance the extent to which the chair might be seen to command the confidence of both the governing body itself and other stakeholders, for example, by advertising publicly any vacancy, and involving staff and students in the processes that lead to the selection of a new chair?**

*“The chair should receive some form of reasonable remuneration.”*

The Report recommended that the chair of the governing body should receive some form of remuneration. It argued that such remuneration would open the position up to a wider field of candidates. It suggested that a stipend or attendance allowance might be a means of achieving this. The dissenting opinion, which was published with the Report, argued against this, making the case that any such payment would militate against the public service ethos inherent in the lay governance of universities, and that absence of payment helps confirm chairs' independence. In considering the issue, account also has to be taken of the wider legal framework, including charity law.

**Questions:**

**Does the absence of remuneration for chairs of governing bodies restrict the range of candidates willing to take on the role?**

**If so, are there any mechanisms which could be used to address the issue whilst ensuring compliance with other legal demands upon the institution?**

## Membership of Governing Bodies (Recommendation 4.2)

*“There should be a minimum of two students on the governing body, nominated by the students’ association/union, one of whom should be the President of the Students’ Association and at least one of whom should be a woman. There should be at least two directly elected staff members. In addition, there should be one member nominated by academic and related unions and one by administrative, technical or support staff unions. The existing system of academic board representatives (called ‘Senate assessors’ in some universities) should also be continued. Governing bodies should also have up to two alumni representatives.*

*The existing practice in some universities of having ‘Chancellor’s assessors’ should be discontinued.”*

The composition of governing bodies is strictly defined in governing instruments and a code of practice cannot alter those instruments. The existing UK Code emphasises the need for members to exercise their responsibilities in the interest of the institution as a whole rather than as a representative of any constituency. Equally, it is recognised that a governing body needs to ensure that it is able to be well informed about the views of both staff and students within the institution. The dissenting opinion sets out arguments against the recommendation in the report. It notes that staff and students are already represented on governing bodies, and identifies other stakeholder groups that might lay claim to representative status on the governing body.

In line with the recommendations of the Dearing and Garrick Reports, and the CUC and other international Codes, the size of Scottish governing bodies has been reducing and is rarely above a total of 25 members, with a lay majority required. There has been a more recent trend in corporate governance towards smaller boards of between 12 and 18 members. Accordingly, the cumulative impact of this recommendation would need to be considered, especially if new categories of internal members were to be added whilst maintaining a lay majority.

**Questions:**

**Are current mechanisms effective in ensuring that the governing body is well informed of the views of staff across the institution?**

**Having noted that the composition of the governing body will be prescribed by the governing instruments are there effective mechanisms to ensure that the work of the governing body is transparent to all staff?**

**Is the present size of your governing body appropriate?**

**Would there be any implications for the effective size of your governing body arising from the Report's recommendations?**

*“Governing bodies should also have up to two alumni representatives.”*

Similar points might be raised in regard to specifically requiring a quota for alumni representatives. Indeed, in the four ancient universities General Council Assessors, all of whom are alumni, form a core element of the lay membership of those universities' governing bodies. Others have a member of the relevant alumni group as an ex officio lay member.

**Question:**

**Would it be appropriate to require that up to two of your governing body members be alumni?**

*“Each governing body should be required to ensure (over a specified transition period) that at least 40 per cent of the membership is female. Each governing body should also ensure that the membership reflects the principles of equality and diversity more generally, reflecting the diversity of the wider society.”*

The existing UK Code stresses the need to ensure a balance in the membership of the governing body. In this context it needs to be borne in mind that gender is one among a number of equality characteristics that institutions need to take into account in regard to equalities legislation. As the Code and other international codes recognise, it is essential to have regard to the skills, knowledge and experience required so that the governing body can function in an effective and

challenging manner. Furthermore, careful consideration would need to be given as to the freedom accorded to staff and student constituencies to elect persons of their choice to the governing body if quotas were imposed.

**Questions:**

**Should the Scottish Code set a quota for the proportion of female members of the governing body?**

**Are there mechanisms, other than imposing quotas, by which good practice in regard to equality and diversity can be achieved?**

*“Expenses available to those who sit on the governing body should include any wages lost as a result of attending meetings.”*

The Report argues that this mechanism will promote interest in membership from a wider group and produce greater social and professional diversity. The existing UK Code recognises that in exceptional circumstances it may be appropriate to remunerate a lay officer, but cautions that key issues need to be taken into account, including charity law and the public service ethos of universities.

**Questions:**

**What provisions do you currently have for paying expenses?**

**Have you experienced any difficulties arising in connection with wages lost as a result of engagement in governing body activity?**

**Would the compensation of lost wages be the best way to address any issues arising?**

*“Senior managers other than the Principal should not be governing body members and should not be in attendance at governing body meetings, except for specific agenda items at which their individual participation is considered necessary, and for those agenda items only.”*

It is important that the size of the governing body be kept to an effective number, and the Dearing Report suggested this be restricted to a maximum of 25 members. If the number of persons attending a meeting is excessive it may alter the dynamic of the meeting and inhibit discussion. For example, it is undesirable for the number of officers in attendance to exceed the number of lay members present. However, the Report's own recommendation that meetings be held in public may be seen to be inconsistent with this recommendation.

Equally, universities are complex and diverse organisations which require a high level of professional expertise in order to function effectively. Good decision-making requires strong and competent professional input. Maintaining a balance between these requirements is essential for effective governance.

#### Questions:

**Does the presence of senior managers attending your governing body inhibit the conduct of business?**

**Is the attendance of senior managers beneficial to the functioning of your governing body?**

**Would there be merit in ensuring that the number of officers in attendance does not exceed the number of lay members present?**

**Are there effective ways of ensuring a proper balance of input with the need to maintain an ethos which is supportive of open and frank discussion?**

#### Composition of the Academic Board (Recommendation 5.1)

*“Apart from the Principal and the heads of School (or equivalent) who should attend ex officio, all other members should be elected by the constituency that they represent, and elected members should form a majority of the total membership. In establishing the membership of the academic board, due regard should be given to the principles of equality, and the need for the body to be representative. This includes a requirement to ensure that there is significant (rather than token) student representation. Overall, academic boards should not normally have more than 120 members.”*

The report uses the term “Academic Board” to cover the senior academic governing body (where such exists) and includes senates and academic councils. The composition of the Academic Board/Senate is usually prescribed in the governing instruments and, for the reasons previously outlined, cannot be adjusted by a code of practice. Nevertheless, it is acknowledged that such a body needs to be truly representative of the academic community and be of a size that can function effectively in the oversight of academic policy and strategy.

### **Questions:**

**Is the current size of your senate/academic board appropriate?**

**Would the Report’s recommendations improve the functioning of your academic board (if you have such)?**

**Would the academic functioning of the institution be enhanced or impaired if such constraints were placed on your academic board composition?**

**Are there alternative ways of ensuring that an appropriate balance of interests is represented on your academic board?**

### **Other issues**

#### **Question:**

**Are there any other issues you wish to raise about how the new Scottish Code might ensure the highest standards of effective governance?**

### **Contact**

To contact the Steering Group or to submit your views on a new Scottish Code of HE Governance, please go to [www.scottishuniversitygovernance.ac.uk](http://www.scottishuniversitygovernance.ac.uk).

## COMMITTEE OF SCOTTISH CHAIRS

# PROPOSED CODE OF PRACTICE FOR HIGHER EDUCATION GOVERNANCE

October 2012

### 1. Background

In June 2011, the Cabinet Secretary for Education and Lifelong Learning commissioned a review of higher education governance which was chaired by Professor Von Prondzynski. The remit of this review was to:

- consider whether current institutional governance arrangements in the higher education sector in Scotland deliver an appropriate level of democratic accountability given the level of public funding institutions receive;
- identify and examine proposals for change which observe the benefits of an autonomous sector but will also consider the importance of full transparency; and
- the effectiveness of management and governance, the clarity of strategic purpose and its efficient implementation.

The Review's consideration was required to encompass:

- the purpose of university governance in Scotland in the 21st century.
- the different forms governance takes across all Scotland's higher education institutions.
- where governance works well, where it does not and what standards of good practice should all governing bodies observe.

In this context the Review was asked to consider the following areas:

- The current engagement of institutions with their communities and stakeholders and specifically to examine the case for a supervisory council or forum representing such interests, its make-up, its remit and the role it might perform in improving institutional governance.
- The current size and composition of governing bodies and whether changes need to be made to enable them to fulfil their role.

- The arrangements for the appointment of Principals and governing body members and the potential for involvement of a supervisory council or forum in that process.
- The case for the introduction of a rector at all institutions.
- The current arrangements surrounding governing body effectiveness reviews and any changes required to deliver greater accountability.
- The effectiveness and transparency of information sharing between the executive and the governing body.
- The effectiveness of communication within institutions between staff, the executive and the governing body.
- The current arrangements and case for representation of students on all governing body committees.
- The current arrangements for the induction, training and ongoing support of lay governing body members and whether specific Scottish provision is needed.

The Review reported in February 2012 and made a number of recommendations on governance arrangements, including the recommendation that the Scottish Funding Council should commission the drafting of a Code of Good Governance for higher education institutions

## 2. The Way Forward

The Higher Education sector in Scotland is a vital and successful part of the economy. It is important in terms of current employment, in developing the necessary skills of the workforce and in undertaking research into all sectors of the economy. It also generates significant income from overseas from educating foreign students and from the international research that it carries out and its reputation throughout the world is extremely high with several universities ranked with the top 100 in the world. Any Code of Practice must recognise the importance of the sector to the economy and ensure that the contribution to the success of the economy nationally and internationally is enhanced.

Universities are communities made up of students, staff and other stakeholders and a successful university recognises the importance of students and the contribution made by staff and other stakeholders. As a result Good Governance requires that the way in which a university is governed must allow for the interests of all those stakeholders to be taken into account.

The Committee of Scottish Chairs (CSC) met to discuss how to take forward the recommendations of the Von Prondzynski Review and concluded that that they should commission that new Scottish Code of Good Governance. The Scottish Funding Council agreed with that approach.



The decision of the CSC to prepare that new Scottish Code of Good Governance was discussed with the Cabinet Secretary for Education and Lifelong Learning on 22 May 2012 and CSC has taken on board suggestions made by him at that meeting. In his statement to the Scottish Parliament on 28 June 2012, the Cabinet Secretary stated that he had asked the CSC to lead a group to develop a new Scottish Code of Good Higher Education Governance.

As a result the CSC has appointed a Steering Group to oversee the preparation of that new Scottish Code of Good Higher Education Governance

### **3. Composition and Remit of the Steering Group**

The steering Group is made up of the following individuals:

- Lord Robert Smith of Kelvin (Chair) – Chancellor of the University of the West of Scotland
- Dame Elish Angiolini – Principal, St Hughes College, Oxford
- Simon Pepper – Former Rector of the University of St Andrews
- Tony Brian – Chair of Court, Glasgow Caledonian University
- David Ross – Convener of Court (Senior Lay Governor), University of Glasgow
- Eric Sanderson – Chair of Court, University of Dundee
  
- with Lord Vallance of Tummel as a Special Consultee providing input from the SSIs

The Remit of, and process to be followed by the Steering Group, are set out in Section 4 below.

#### **4.1 Terms of Reference**

The remit of the Steering Group is to develop a new Scottish Code of Good Higher Education Governance which:

- takes account of the recommendations of the Von Prondzynski review;
- incorporates the standards of good practice existing in the Higher Education sector and elsewhere;

- makes proposals that are based on sound evidence;
- clearly identifies the separate duties and responsibilities of management and governing bodies;
- reflects both the inputs and the outputs required of governing bodies and governance;
- takes account of the importance of both the relationships and processes required to achieve good governance;
- considers the inter relationship which governing bodies should have with other bodies within their institutions concerned with governance ;
- is suitably flexible so that it can be applied to all institutions including the Small Specialist Institutions; and
- addresses if, and to what extent, the Code should apply to the Scottish operations of institutions based in other countries and to overseas operations of Scottish institutions;

## 4.2 Process

In developing the new Scottish Code of Good Higher Education Governance the Steering Group is asked to:

- operate in an open transparent manner publishing reports on its progress, consultations and responses received thereto and demonstrating the reasons for the terms of the new Code;
- consult students, staff and members of governing bodies at each Scottish Higher Education institution and Lord Vallance as Special Consultee for SSIs on the draft code as it is developed;
- consult other key external stakeholders in the sector on the draft as it is developed; and
- seek to complete its task by Spring 2013.