the scottish code of
GOOD HE GOVERNANCE

Inspiring Leadership | **Leadership Foundation**
for Higher Education

Report to the Scottish Code of Good Higher Education Governance Review Steering Group

By the Leadership Foundation for Higher Education

25th November 2016

the scottish code of
GOOD HE GOVERNANCE

Table of Contents

the scottish code of
GOOD HE GOVERNANCE

Table of figures

1.   Executive Summary

1.1.   Background

The Scottish Code of Good Higher Education Governance[1] ('the Code') was published in 2013 by the Committee of Scottish Chairs (CSC) of Scotland's 19 higher education institutions (HEIs). At the time, CSC committed to reviewing the Code after three years, and the *HE Governance (Scotland) Act 2016* has provided a further reason for a review.[2]

CSC convened a Steering Group[3] to oversee this review during 2016/17, and commissioned independent consultants from the Leadership Foundation for Higher Education (LFHE) to collect and analyse evidence for the review through an extensive programme of consultation between June and October 2016. The consultation involved: visits to all the Scottish HEIs involving discussions with 300 individuals across all constituent groups; meetings with the national stakeholders from among staff and student representatives; a survey of governing body members (117 responses); and an open consultation (22 responses)[4]. The specific focus of the consultation was on the effectiveness of the Code itself, and whether changes ought to be made to it both generally and specifically in light of the 2016 Act.

This report is a summary of the evidence gathered through the consultation and has been prepared by the LFHE team for consideration by the Steering Group. Given the nature of reviews is to shine a light on possibilities for improvement and invite a critique of their subject, this report focusses on consultees' suggested changes to the Code. However, the overwhelming balance of opinion expressed during the consultation was that the Code is a useful instrument and provides a sound basis for governance in Scottish HEIs. Moreover the review's scope was the provisions contained within the Code, rather than the effectiveness of its implementation within individual HEIs.

1.2.   Views on the existing Code

Consultees' views were gathered on how well they believe the Code has served its purpose and its effects on the governance of Scottish HE. Although there was significant variation in the levels of familiarity with the Code among consultees to the review, the majority considered that the Code has had a positive effect. In the survey of governing body members 57% considered the Code is 'extremely' or 'very useful', and a further third found it 'moderately useful'.

The Code is broadly accepted across the HE sector and there is widespread acknowledgement that it has led Scottish HEIs to develop and enhance aspects of their governance practice, where this was required to ensure compliance. This has had a benefit in helping enhance the quality of governance in institutions, although there continues to be

---

[1] Committee of Scottish Chairs (2013). *Scottish Code of Good Higher Education Governance*. Available at: http://www.scottishuniversitygovernance.ac.uk/wp-content/uploads/2013/07/Scottish-Code-of-Good-HE-Governance.pdf.

[2] For the HE Governance (Scotland) Act 2016 and details of the consultation during its passage see: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/90125.aspx.

[3] See the Scottish Code website for membership of the Steering Group at: http://www.scottishuniversitygovernance.ac.uk/steering-group-2.

[4] Nineteen organisations and three individuals responded to the open consultation. The majority are available from the Scottish Code website at http://www.scottishuniversitygovernance.ac.uk/consultation-process/.

a recognition that ideas of good governance will continue to evolve and further improvement is both possible and desirable and that much can be learned from elsewhere.

Consultation across the HE sector revealed that the debate around the Code and HE governance has become 'politicised' over recent years. Clearly the issue of the changes affecting governance in Scottish HEIs is not seen universally as a matter which is resolved. While the majority of governing body members and other stakeholders were broadly positive and fairly neutral about the Code, strong views were expressed about the effectiveness of governance in the sector, the utility of the Code, and on the need for any significant change, including the provisions within the 2016 Act to be implemented by Scottish institutions over the next few years. These ranged from senior management teams on the one hand who felt that the Code and governance in Scottish HEIs are more than adequate, through to strong criticism voiced by a minority of consultees, notably national trade unions representatives, who believe that the Code has had little impact on good HE governance, and that there is little incentive for HEIs to adhere to the 'comply and explain' approach.

1.3.   Changes suggested by the consultation

The *Higher Education Governance (Scotland) Act 2016* lays down certain specific requirements, some of which are directly in contradiction with the extant provisions in the Code. So, for example, Principle 11 sets out a procedure for the appointment of the chair of the governing body which differs from the process now defined in the Act for the election of the chair. By contrast, the Code does not define the precise membership of a university governing body so the requirements in the Act relating to student and staff members (including trade union nominated members) will bear directly on the governing instruments of each university. Therefore there is a need to at the very least amend the Code to remove any conflicts with the provisions of the Act, but in addition the Steering Group will need to decide whether or not more of the Act should be directly reflected in the Code.

In general, the prevalent view from the consultees expressed during the consultation is that the Code has proved useful and has helped improve the quality of governance in HEIs. Many people feel there is little need for substantial change, but a majority of consultees believe there are areas in which relatively minor changes and additions would improve the Code. The strong counter view expressed by the national trade unions is that the Code has proved ineffective and needs a complete rewrite.

Changes suggested through the consultation process are not in the same category of *required* changes resulting from the new legislation, but were proposed as *desirable* changes, from the point of view of consultees. Aside from the issue of the format of the Code which was widely commented on by consultees, there were a number of common suggestions for changes to the Code raised across the consultation. These were either aimed at achieving greater clarity or rectifying what are considered to be omissions. These are covered in detail in the body of the report, but in summary the suggested changes are in the following areas:

- **Equality and diversity** – this was perhaps the most frequently cited issue in the context of changes that should be made to the Code. There is a clear view that the Code should be revised to give much greater prominence to the role of governing bodies in

promoting equality and diversity, and not just in regard to gender balance. This implies the wording should be strengthened and that it becomes an additional Main Principle.

- **The collective and trustee responsibility of governors** – the Code makes clear in Main Principle 6 that all members of the governing body *'shall exercise their responsibilities in the interests of the institution as a whole rather than as a representative of any constituency'*. As trustees, no members of the governing body, be they staff, students or lay members, can act to promote a sectional interest and many consultees suggested this fact needed to be made more explicit in the Code and better guidance provided.

- **Governing bodies' oversight of academic matters** – many consultees felt that the Code is not clear on the role of the governing body in regard to the academic work of HEIs, although it makes clear its responsibility for determining the institution's future direction. This lack of clarity is unhelpful and has led to problems in some institutions in regard to the respective responsibilities of the Court and Senate or equivalent. Some consultees went further and suggested that a revised Code needs to strike a better balance between the primacy of Senate on academic matters.

- **The 'status' of different categories of members of governing bodies** – many staff consultees raised the fact that they do not feel that all members of governing bodies are treated in the same way. In particular it was reported that staff and student members are often precluded from involvement in the discussion of certain topics and are not permitted to be members of certain committees, most often those concerned with financial or staff issues. This, it was suggested, is unacceptable and should be the subject of explicit guidance in the Code. In formal governance terms, all members of the governing body carry exactly the same responsibilities and liabilities and all are equally trustees of the university as a charity (or directors of the company where the HEI is a registered company).

- **Transparency and setting values and behaviours** – there were many comments from consultees to the effect that the governance process should be more open, as too much of governing bodies' business was held to be confidential. There are however various developments in practice at a number of universities designed to increase understanding of the role and work of the governing bodies. In addition, some consultees saw as an important aspect of the role of the governing body setting the values of the institution and the expectation of behaviours based on the highest standards as laid out in the Nolan Principles. The inclusion of a new section on values, standards and behaviours might be an issue to be given greater prominence in any revisions to the Code.

- **Remuneration Committees** – in particular trade unions nationally and local representatives are in favour of reform to the way Remuneration Committees operate in HEIs. In particular they feel they ought to operate in an even more open way. They believe that the membership of these committees should include a staff member. The point was also made by a number of the staff governors and a few of the students consulted, along with the broader point that excluding certain categories of governing body member from particular committees creates an unhelpful distinction.

- **Senior staff attending governing body meetings** – a number of staff governors, and several local trade union representatives, raised the issue of senior members of the institutions' executive teams, such as Vice Principals and directors of professional services, routinely attending meetings of the governing body and participating in all the discussions (not just on particular agenda items within their remit). The current Code allows Principals to bring in members of the executive to attend meetings, although strictly as observers. It was suggested that the Code ought to consider how this can be curbed. Including a substantial number of executive team members at all governing body meetings has the further disadvantage of making the size of the meeting unwieldy and difficult for all of the members to have an opportunity of speaking.

- **Format of the Code** – there was much discussion throughout the consultation on the format of the Code. In particular, the Steering Group may wish to reflect on whether all the current 18 principles in the Code are truly principles or perhaps that some are statements of best practice. A clearer separation of the key principles or fundamental elements of good governance from the good practice guidance would be a helpful clarification. On a related issue, there were numerous comments made about the supporting guidance which was seen by some to be overly detailed and too prescriptive. The Steering Group may wish to consider whether the supporting guidelines could, with benefit, be clarified and perhaps made less detailed, bearing in mind the growing maturity of the governance processes across all of Scotland's HEIs. The good practice examples are the third element of the Code. While many people commented on the value of providing these 'exemplars', it was also recognised that good practice develops and changes and that it is important to keep examples up to date. For this reason many consultees agreed that the good practice examples should be held on a governance website. The whistle blowing annex, which was drawn from the 2009 CUC Code, does need to be amended as best practice has moved on in recent years.

2.   Introduction

2.1.   Review of the Scottish Code

The Scottish Code of Good Higher Education Governance[5] ('the Code') was published in 2013 by the Committee of Scottish Chairs (CSC) of Scotland's 19 higher education institutions (HEIs). From its inception the Code was intended to recognise and accommodate the continuous evolution of best practice, given that Scottish higher education (HE) operates in a challenging and rapidly developing context. For this reason, CSC committed to reviewing the Code after three years. Intervening legislative change has provided a further reason for a review. Accordingly, CSC has commissioned a Steering Group to carry out an evidence-based review of the Code during 2016/17.

The Steering Group comprises independent members and representatives of the key stakeholder groups, who together bring wide experience of governance in HE and other sectors.[6] Its remit is to review and, where appropriate, revise the Code in a manner which:

- Incorporates standards of good practice existing in the HE sector and elsewhere

- Makes proposals based on sound evidence

- Considers the viewpoints of all major stakeholders

- Takes account of any relevant changes in the legislative and regulatory context

- Recognises the separate duties of management and governing bodies

- Is sensitive to the diversity of the sector, including the nature of the Small Specialist Institutions

- Takes account of the relationships and processes required to achieve good governance

- Reflects both the inputs and outputs required of governance and governing bodies.

2.2.   Background and context

The creation of a Scottish Code of Good HE Governance was a recommendation of a Review of HE Governance[7] commissioned by the Scottish Government in 2012, which was chaired by Professor von Prondzynski. Thereafter, CSC produced the Code by agreement with the Scottish Funding Council (SFC) and the Scottish Government. The Code was devised with the aid of a Steering Committee and governance experts who consulted with the HE sector[8] and drew on the existing *UK Corporate Governance Code*[9] and the 2009 Committee of

---

[5] Committee of Scottish Chairs (2013). *Scottish Code of Good Higher Education Governance*. Available at: http://www.scottishuniversitygovernance.ac.uk/wp-content/uploads/2013/07/Scottish-Code-of-Good-HE-Governance.pdf.

[6] See the Scottish Code website for membership of the Steering Group at: http://www.scottishuniversitygovernance.ac.uk/steering-group-2. The

[7] The Scottish Government (2012). *Report of the Review of Higher Education Governance in Scotland*. Available at: http://www.gov.scot/resource/0038/00386780.pdf.

[8] More detail on the process are available at: http://www.scottishuniversitygovernance.ac.uk/.

[9] Financial Reporting Council (updated 2016). *Corporate Governance Code*. Available at: https://frc.org.uk/Our-Work/Publications/Corporate-Governance/Final-Draft-UK-Corporate-Governance-Code-2016.pdf.

University Chairs *Governance Code of Practice*[10]. The new Scottish Code was adopted by the SFC in 2014 as constituting the principles of good practice in governance with which HEIs are required to comply as a condition of the payment of their primary public funding.[11]

As well as the creation of a Scottish HE Governance Code, the von Prondzynski Review also recommended a series of other governance changes, which included the following (among other recommendations):

- Inclusion of two students, two trade union nominees and two other staff members on HEIs' governing bodies (governing bodies already had at least one student member and at least one staff member but none in a trade union nominated capacity)

- Provision of remuneration (on request) for Chairs of governing bodies

- Election of the Chairs of HEIs' governing bodies

- Certain restrictions on the composition of HEIs' academic boards

- A new definition of academic freedom for use in the Scottish HE sector.

These recommendations have now been implemented through the *HE Governance (Scotland) Act 2016*. The passage of this legislation produced significant controversy in the sector, and forms an important part of the context for the current review of the Code.[12]

2.3. Form of the 2013 Scottish Code

The Scottish Code comprises 18 main principles with supporting guidelines (of varying amounts of detail) for each. It operates according to the commonly employed approach in governance of 'comply or explain'. In addition, the document includes examples of good practice for some of the principles, together with an annex containing detailed guidance on whistleblowing. The Code's main principles focus on the following aspects of governance:

1. The Governing body
2. Legal obligations
3. Conduct of members
4. Frequency of meetings
5. Statement of Primary Responsibilities
6. Responsibilities of members
7. The Chair
8. The Head of the Institution
9. Governing body members – balance of skills and experience
10. Governing body members – composition
11. Governing body members – appointment of Chairs
12. Induction of members
13. The Secretary
14. Conduct of meetings
15. Remuneration
16. Governing body effectiveness reviews
17. Effectiveness of the Institution
18. Publication of results of effectiveness reviews

---

[10] CUC (latest 2014). *The Higher Education Code of Governance* available at: http://www.universitychairs.ac.uk/wp-content/uploads/2015/02/Code-Final.pdf. The CUC Code had been used as the basis of HE governance across the UK sector including in Scotland since 2004.

[11] This requirement was introduced through the Post-16 Education (Scotland) Act 2013 (available at: http://www.legislation.gov.uk/asp/2013/12/pdfs/asp_20130012_en.pdf. See also Scottish Funding Council (2014). *Good Practice in Higher Education Governance*. SFC/GD/15/2014. Available at: http://www.sfc.ac.uk/communications/Guidance/2014/SFCGD152014.aspx.

[12] For the HE Governance (Scotland) Act 2016 and details of the consultation during its passage see: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/90125.aspx.

2.4. Approach to the consultation

The Committee of Scottish Chairs commissioned the Leadership Foundation for Higher Education (LFHE) to lead the consultation to collect and analyse evidence for the 2016 Review of the Code, and undertook an extensive programme of consultation between June and October 2016. LFHE used a qualitative approach, involving a range of consultative routes to reach all the priority stakeholder groups. In summary, the consultation involved the following activities (Appendix One provides further details):

- Consultative visits to the 19 Scottish HEIs involving semi-structured individual and group interviews with the relevant stakeholder groups: lay governors; senior management teams; staff (existing governing body members and local trade union representatives); and local student association representatives (in total with almost 300 individuals)

- Consultative meetings with national stakeholders: Educational Institute of Scotland; National Union of Students; Scottish Trade Union Congress; University and College Union; Unison; and Unite

- An e-survey (circulated by the HEIs to current and recent governing body members) which received 117 responses from governors of all the different categories, with at least one response made from each of the HEIs, and an average of seven per institution

- An open consultation inviting responses from individuals or organisations with an interest in HE governance resulted in 22 responses (19 from organisations and three from individuals).

The focus of the evidence gathering across all the consultative routes was on:

- How well the Scottish Code of Good HE Governance has served its purpose

- Effects of the Code on the governance of Scottish HE

- Any changes to the Code which could help improve the governance of Scottish HE

- Any changes to the Code required to reflect legislative or regulatory changes made since 2013, specifically the 2016 Act

- Any changes to improve the format and presentation of the Code.

The LFHE team is grateful for the support and generous input of everyone who contributed to this consultation process.

2.5. About the evidence

The LFHE team has completed the analysis the consultation, which is presented and discussed in this report in summary form. The Steering Group should note the following caveats about the evidence and how this is presented in the report:

1. By their nature reviews shine a light on possibilities for improvement and invite a critique of their subject. It is for this reason that the report focusses on consultees' suggested changes to the Scottish Code. However, broadly the balance of opinion expressed during the consultation was that the Code is a useful instrument, and provides a sound basis for governance in Scottish HEIs. Nonetheless there are some divergent opinions, with one sub-set of stakeholders who believe that the Code does not need to be changed at

all, and another sub-set who are of the view that the current Code requires substantial changes.

2. The results from the mainly qualitative evidence gathered are difficult to aggregate in a quantitative sense. However, the greatest quantity of evidence was provided (in breadth and depth) by the consultative visits to the nineteen HEIs, in which circa 300 individuals took part.

3. There was a reasonably consistent set of messages from the consultation, which can be attributed to each of the main stakeholder groups. The majority positions from the different stakeholder groupings are therefore presented throughout the report, with observations or suggestions made by individuals judged particularly interesting or constructive included for the Steering Group to note.

4. Finally, the research to collect evidence for the review focussed on the provisions contained within the Code, rather than the effectiveness of its implementation within individual HEIs. However many consultees discussed both these aspects of governance almost interchangeably, as the distinction is not clearly demarcated or understood between *what* the governance provisions should be and *how* these are implemented at the institutional level. Theoretically at least an institution could be fully compliant with the Code, while the way in which this operated at a local level did not represent effective governance. We have sought as far as possible to present the evidence gathered on the Code, and not include commentary on its implementation, as the latter is clearly out of scope of this review.

2.6. About this report

This report has been prepared by the LFHE team for consideration by the Steering Group. It presents a summary of the results of all the evidence collected to help inform the Steering Group's review of the Code. Thereafter, the Steering Group will report back to CSC during 2017.

3.   Perceptions of the Existing Scottish Code

3.1.   Overview

The focus of this section is on the findings from the consultation about the current Scottish Code of Good Higher Education (HE) Governance ('the Code'). It summarises consultees' views on how well they believe the Code has served its purpose, and its effects on the governance of Scottish HE. It is based on the distillation of results of all the consultative methods, that is:

- Semi-structured, in-depth meetings held at every higher education institution (HEI) with all the constituent groups

- Meetings with the national stakeholders

- Survey of current and recent governors

- Open public consultation.

Any clear variations in opinions between the sources of evidence and among the different stakeholder groups are drawn out throughout the discussion below.

3.2.   Familiarity with the Scottish Code

There was significant variation in the levels of familiarity with the Code among consultees to the review. Some of those consulted during the institutional visits, particularly students, admitted to not being particularly familiar with the Code. The timing of the consultative visits over the summer break and early into the new academic year meant, with a small number of exceptions, that student representatives consulted were fairly new in post, and the majority had only attended one governing body meeting. The other group who typically had little knowledge of the Code were local trade union representatives consulted during the institutional visits, with the exception of those who were also current or former staff elected members of governing bodies.

To ensure more productive discussions following the early institutional visits, a more detailed briefing paper and a copy of the Code was sent to all consultees in advance of the institutional meetings. Clearly this prompted a significant number of consultees to read the Code, in some cases for the first time, or certainly since their initial induction as governing body members.

Naturally, as all HEIs are complying with the Code, the procedures and practices of a governing body will follow its principles and guidelines, so members of governing bodies will be familiar indirectly with the Code. It is the explicit responsibility of the Secretary to the governing body to ensure that the operation of the university's governance complies with the provisions of the Code, and to alert the Chair where there is any potential divergence and that was recognised by a number of the consultees.

A good induction system for new members of governing bodies will include an introduction to the Code, and often provide new members with their own copy. However, in the subsequent years the Code would not generally feature explicitly as an item for discussion at governing body meetings. Among respondents to the survey of current and recent governing body members 61% of respondents said they were 'extremely' or 'very' familiar

with the content of the Code, with 34% 'moderately' familiar and just 4% 'slightly' familiar. For those who are not present or past members of a governing body, the Code is not something they would have reason to know about.

3.3.   Range of opinion on the Code

Consultation across the HE sector revealed that the debate around the Code and HE governance has become 'politicised' over recent years. The introduction, amid significant controversy, of the *HE Governance (Scotland) Act 2016* is bringing a number of substantial changes to the governance arrangements of HEIs in Scotland. The specific focus of this consultation was on the effectiveness of the Code itself, and what changes ought to be made to it both generally and specifically in light of the 2016 Act.

Inevitably however, many of the discussions during the institutional visits and generally throughout the consultation touched on the context which led to the production of the Code in 2013. Clearly the issue of the changes affecting governance in Scottish HEIs is not seen universally as a matter which is resolved. Some consultees regarded the current review of the Code as an opportunity to address issues which they believe were either omitted from the current version when it was drafted in 2013, and / or which were not included in the provisions of the 2016 Act.

Strong views were expressed on both sides of the argument about the effectiveness of governance in the Scottish HE sector, the utility of the Code, and on the need for any significant change, including the provisions within the 2016 Act to be implemented by Scottish institutions over the next few years. As one Chair of a governing body put it, *'the Scottish University governance system was already the envy of other OECD countries – the pressure on university governance from Government was ideologically driven'*. By contrast, one of the local trade union representatives at a consultation meeting argued for '*greater democracy*' and a '*better representation of Scottish society*' on university governing bodies.

Many consultees highlighted the fact that that the development of the Scottish Code drew heavily on the Committee of University Chairs (CUC) Governance Code, first issued across the UK in 2004 and therefore much of the main principles had already been implemented extensively within Scottish HEIs. However, there were further positive changes arising from the implementation of the supporting guidelines of the Scottish Code. A key difference was that the earlier CUC Code did not carry the same mandatory force as the Scottish Code, which since 2014 has been a condition of grant from the Scottish Funding Council (SFC).

There was widespread acknowledgement throughout the consultation that the Code has caused Scottish HEIs to develop and enhance aspects of their governance practice, where this was required to ensure compliance. Moreover a significant proportion of institutional consultees, specifically senior management and lay members, felt that the Code has created a greater degree of consistency across HE governance and has created a collective sense of ownership, while maintaining a level of autonomy appropriate to the heterogeneity of Scottish institutions and enabling them to apply the principles flexibly.

National trade union representatives differed in their views, believing that the Code itself has had little impact on good HE governance as it is simply too vague. They believe both that the HE sector did not actually introduce an appropriate Code in 2014, and that this led

to the Scottish Government's subsequent intervention through the introduction of legislation.[13] Moreover, the perception of national trade union representatives is that there is little incentive to adhere to the 'comply and explain' approach and that institutional management teams often largely control governing bodies, which in turn do not provide effective oversight of the executive. Moreover, that management teams do not foster an atmosphere which makes it easy for staff members to contribute and challenge.

The introduction of the Scottish Code in 2013, together with the requirement to report back within a year on the extent to which each institution met the provisions of the Code, undoubtedly provided a positive impetus for Scottish institutions to review their governance arrangements and enhance their practice. A Committee of Scottish Chairs (CSC) survey conducted one year after the introduction of the Code indicated that all Scottish HEIs were almost fully compliant with the Code.[14] In most areas of non-compliance there were sound reasons for this, such as the need to amend the institution's governing articles to match the provisions of the Code, the process for which takes some time to accomplish outside of the control of HEIs.

3.4. Effects of the Code on HE governance

3.4.1 Comply or explain

There is ample evidence that the introduction of the various governance codes in the HE sector since 2004 has resulted in improvements in the quality of governance generally. Indeed, the use of codes of good practice has spread across many different areas in both the public and private sectors, and has often been seen as a way of addressing prominent, if perhaps isolated, cases of failure in particular organisations. The introduction of corporate codes which apply to public companies were among the first widespread examples, and subsequent codes, including in the HE sector, have drawn on these. As with corporate sector codes, the principle of 'comply or explain' contained in the Scottish Code has been widely adopted to avoid inappropriate insistence on requirements which do not make sense or work in every single organisation.

In the HE sector, particularly in Scotland, there is considerable diversity between different types and sizes of institutions. Sometimes, for example, what is relevant for one of the 'ancient' universities simply does not apply in one of the small specialist institutions and vice versa. Many of the respondents to the survey of governing body members made this point; for instance:

> *'As the Code is based on principles rather than a prescriptive set of rules, it allows each HEI to reflect the principles with specific reference to its own particular context and constitutional arrangements. What is appropriate governance for a large research intensive HEI with multiple campuses would be disproportionate and inappropriate for a single campus teaching only institution. The Code's philosophy*

---

[13] Note the *Report of the Review of Higher Education Governance in Scotland* did recommend both a Code and legislation, see: http://www.gov.scot/resource/0038/00386780.pdf.

[14] Committee of Scottish Chairs (2014). *The Scottish Code of Good Higher Education Governance: One Year Into Implementation*.
Available at: http://www.scottishuniversitygovernance.ac.uk/wp-content/uploads/2014/11/Scottish-Code-of-Good-HE-Governance-ONE-YEAR-ON-final-4NOVEMBER.pdf

> *and the 'comply or explain' provision encourages HEIs to find the best governance solution for their institution.'*

> *'[The Code] provides firm, tried and tested, principles of Governance appropriate to all of a very wide range of SHEIs, thanks in particular to the acceptance of the many different ways in which those principles can be applied and to the adoption of the 'comply or explain' approach. The recognition of the special circumstances of the SSIs…is particularly relevant in this regard.'*

In the case of the Scottish HE Code, the mechanism of 'comply or explain' operates via the SFC's responsibility, bestowed through the 2013 Post-16 Education (Scotland) Act, to uphold *'any principles of governance which appear to the Council to constitute good practice in relation to higher education institutions'*, as a condition of grant funding. Since the SFC has adopted the Code as the embodiment of such principles, any non-compliance with the Code would have to be explained to the satisfaction of the SFC.

3.4.2 Utility of the Code

When asked in the survey how useful the Scottish Code has been, 57% of governing body members considered the Code to be either 'extremely' or 'very useful'. A further one-third said it is 'moderately useful' and 10% find it just 'slightly useful'. To provide a flavour of governors' reasons for finding the Code particularly useful, a selection of the reasons given, are provided below.

> *'Effectively the Code is 'good sense', but it is useful to have it documented, and accepted across HE in Scotland. As a Governor, we better understand the responsibilities of our role.'*

> *'It is a useful resource, covering all the key aspects of governance, for reference and the additional guidelines are helpful.'*

> *'The Code is a well-written, contemporary document capturing the essence of good corporate governance, and articulating this essence in the particular context of Scottish university governance. It has not had a significant impact on governance of our institution, which in my judgement was already well governed.'*

> *'The Code has given us a clear but reasonably flexible model against which to view governance internally and a 'non-threatening' route to self-improvement.'*

A selection of some of their reasons given by those institutional governors who found the Code moderately or slightly useful, are:

> *'Fine within itself - not always obvious how it is operationalised, particularly around transparency.'*

> *'The Code was produced in response to the von Prondzynski recommendations, however the original Code adopted current practice as 'best practice' and did little to address the issues raised in the review. The Code has been 'slightly useful' in providing a benchmark to measure governing bodies against, but the benchmark has been set unreasonably low.'*

> *'It is overly prescriptive and includes a number of unnecessary regulations. In its attempt to improve governance it may not achieve the desired effect.'*

> *'The Code has acted as a useful starting point in promoting the integrity and probity of Scottish Universities, but is disappointing that it has not been seen as strong*

enough to avoid the imposition by the Scottish Government of legislative requirements regarding governance.'

Governing body members highlighted a number of specific changes they have observed to their institutions' governance as a result of the implementation of the Code. Many of the public consultation responses also noted the same changes. These included:

- Generally, reviews of institutions' governing instruments and amendments to ensure compliance with the Code

- More transparent recruitment procedures for the Principal, Chair and governing body members, improvements to appraisal processes for the Principal and Chair, and better clarity on some of the key roles, including that of Secretary

- Changes to the composition of governing bodies including greater gender diversity, and to some extent age diversity, on governing bodies. As the Equality Challenge Unit put it in their submission to the consultation *'[the Code] has served an important aspect of its intended purpose; that of increasing the focus on equality and diversity in Scottish HE governance'*, and that in 2016 women made up 38% of governing body members, up from 32% in 2013, and 28% of chairs, up from just 9% in 2013[15]

- Increased student representation on governing bodies and on specific committees, particularly nominations committees

- Reduction in the size of governing bodies

- Changes in chairing of remuneration and composition of nominations committees

- Introduction of annual effectiveness reviews of the governing body

- Formal adoption of a statement of primary responsibilities and new schemes of delegation and greater transparency in publishing governing body minutes and about its membership and processes.

3.4.3 Effectiveness of the Code and its relationship to good governance

Opinions vary on the effectiveness of the current Code in ensuring good governance in its implementation within institutions, and these were strongly communicated by many of the institutional consultees. For instance, as one lay governing body member stated:

> *'[The Code is an] …excellent document which provides for a flexible approach based on comply or explain. The Code is well regarded and has been adopted. The Code is not prescriptive in the way that legislation is'.*

In contrast, the national trade union representatives expressed their concern that the concept of 'comply or explain' allows institutions not to meet basic standards of governance, and that the ability to explain was they felt a 'cop out', because the governing body was not really 'explaining' to anyone or actually accountable to anyone.

Certainly there is a challenging question raised repeatedly during the consultation as to whether the existence of a Code in itself ensures effective governance. For instance a few

---

[15] Women Count (2016). *Leaders in Higher Education 2016*. Available at:
https://womencountblog.files.wordpress.com/2016/04/women-count-report_web_final.pdf

consultees argued firmly that it does not, and that it is possible to comply formally with the requirements of the Code in a way that could be confirmed by a compliance audit, without the governing body actually conducting itself in a way that represents good governance. As one senior manager responding to the survey put it:

> *'Codes of governance cannot, even in principle, ensure good governance. History is littered with examples of institutions of all kinds, including universities that have been badly governed whilst notionally subject to a governance code. The Scottish Code is certainly an aid to good governance, but it cannot be more than that.'*

Furthermore, in some of the discussions with elected staff representatives on governing bodies, they raised examples of poor governance behaviours, such as decisions effectively being taken by small sub-groups of governors, without the knowledge of the majority. Such issues are only likely to be revealed in the course of governance effectiveness reviews. External effectiveness reviews are required under Principle 16 of the Code to take place not more than every five years (rather than '*not less than every five years'* as it states in error).

Nonetheless, the Code does sit within a regulatory and legislative context and demonstrable changes have taken place across the Scottish HE sector, which have undoubtedly improved the quality of governance. For example, in order to improve the opportunity for effective engagement by all governors, the maximum size of 25 for a governing body is contained in the Code. The last of the Scottish universities with a governing body with more than this number of members has recently revised its membership to comply with the Code. Another example is the now universal use of Key Performance Indicators (KPIs) to assist in monitoring institutional performance, itself an essential role of governing bodies laid down in the Code under Principle 17.

Governors were also asked in the survey for their views on how effective the Code has been for ensuring good governance for their own governing body, for their institution, and Scottish HE more generally. As the figure below illustrates the majority in each case responded that the Code is 'extremely' or 'very effective', though more so for governing bodies and the institution, and less for Scottish HE.

Figure 1 Effectiveness of the HE Code in ensuring good governance

How effective is the Code for ensuring good governance for the following:
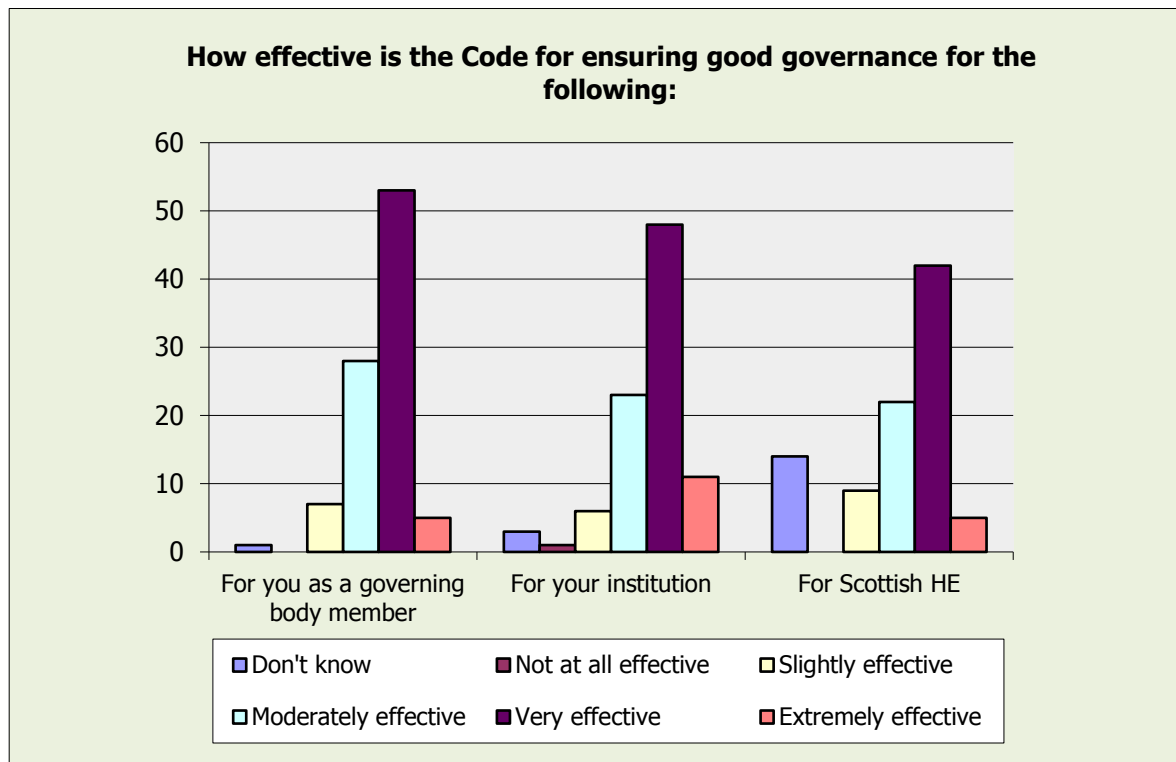
Respondents were asked to provide examples of specific improvements which the Code has brought, or ways it has failed to serve its purpose. The majority were positive highlighting: the ability to measure and improve effectiveness against the Code; better clarity on the roles; clearer guidance on remuneration; promoting equality and diversity, particularly gender; and increasing transparency, specifically in recruitment of members. Examples provided include the following (with others in Appendix Two):

> '…we took the opportunity of its publication to review all aspects. This resulted in a greater attention to our Skills Matrix, to the precision of our Remuneration Policy and to the rigour and staff/student involvement in the recruitment and appointment of our new Principal.'

> 'Gender equality has become a live issue for governing bodies to address, due in part to the Code, however more action is required to improve the situation.'

> 'The Code has led to a marked improvement in the way that Chairs and independent members of governing bodies are appointed. Public advertisement of vacancies on governing bodies has led to a wider pool of applicants, as well as being more open and transparent.'

In contrast, others pointed to areas where the Code has not served its purpose, for instance:

> 'Much of the Code is actually unnecessary, it is giving a problem which either did not exist or was specific to certain institutions.'

> 'There is still much progress to be made in increasing the diversity of appointments.'

> 'It's disappointing to note that all bar two Universities have not published the salaries of their senior executive team by salary band as required by the Code.'

3.5. Conclusion

The Scottish Code of Good HE Governance is broadly accepted across the HE sector and has had a real benefit in helping enhance the quality of governance in institutions. There continues to be a recognition that further improvement is possible and that much can be learned from other sectors and other HE institutions in Scotland and elsewhere. Ideas of good governance will continue to evolve. So, for example, there is a growing move towards greater transparency in the governance process. For instance one Scottish university has an arrangement whereby a small number of staff and student observers can attend Court meetings, and another has one public meeting each year.

Strong criticism from a minority of consultees, notably national trade unions representatives, does however need to be noted and considered against the broadly positive comments described above communicated by the majority of governing body members and other stakeholders.

4. Consultees' Proposals for Changes to the Code

4.1. Overview

The focus of this section is on the findings from the consultation on whether, and if so how the current Scottish Code of Good Higher Education Governance ('the Code') should change. Consultees' views are summarised on whether there are:

• Potential changes to the Code which could help improve the governance of Scottish higher education (HE)

• Changes to the Code which should be made to reflect legislative or regulatory changes made since 2013, specifically the HE Governance (Scotland) Act 2016

• Changes which could improve the format and presentation of the Code.

This section distils the results of all of the consultative methods employed throughout the evidence gathering process. These were the extensive consultative meetings at institutions, meetings with national stakeholders, the survey of current and recent governing body members, and the public consultation. Any clear variations in opinions between the sources and among the different stakeholder groups are drawn out in the summary of the evidence presented below.

4.2. Range of opinion on changes required to the Code

The prevalent view among the majority of those consulted during the institutional visits is that there are few essential changes required to the Code. Clearly the exception, which was broadly recognised across all groups of institutional consultees, is that particular aspects of the Code are now in contradiction with the 2016 Act, and therefore amendments will be needed where this is the case.

Among all the institutional senior managers consulted and a majority of lay members, there was a clear consensus that only minimal changes are required to the Code. This is perhaps to be expected since the Code was introduced just three years ago. As one institutional consultee put it *'governance principles, like values, should persist'*. Many respondents to the survey made similar points, such as the following.

> *'It does seem to me in general terms …that it may be a bit premature to be proposing substantive changes at what is still a relatively early point in the life of the Code.'*
>
> *'I do not think that any changes are required, apart from anything necessary to ensure consistency with the Higher Education Governance (Scotland) Act 2016.'*

Views of the staff members of governing bodies and local trade union representatives consulted during the institutional visits were more varied, but many would like to see at least some amendments to the Code to help strengthen or clarify particular aspects of it.

The results of the e-survey of governing body members and public consultation were also somewhat mixed as to whether changes to the Code are needed. There was agreement that the Code ought to be updated in light of the recent Governance Act and any other relevant legislation or regulation. However, the majority of respondents did not consider that fundamental changes need to be made to the Code beyond this. Rather they also suggested a range amendments and improvements which could be made to strengthen and clarify the

document. A raft of specific changes were also suggested by respondents to the public consultation. These included highly detailed responses in particular from Audit Scotland, which suggested a range of technical changes to update and improve the Code, and also from the Equality Challenge Unit, ICSA: The Governance Institute and the Royal Society of Edinburgh.[16]

National trade union representatives held a contrasting view from the majority of consultees. They believe that the Code not only needs to be changed in order to comply with the recent legislation, but given their view that the current Code is largely unfit for purpose, they want a new Code to be written from scratch, rather than amending the current version. Whilst there is clearly a range of views about the extent to which a future Code ought to relate directly to legislation, the clear view among national trade union representatives is that the Code would benefit, and indeed only be legitimate, if it referenced and referred to relevant legislation (particularly the *HE Governance (Scotland) Act 2016*) extensively.

4.3.   Proposed changes

Consultees were asked for their views as to whether and, if so, how the Code ought to be changed, notwithstanding the changes needed to align the document with the recent governance legislation. The 2016 Act lays down certain specific requirements, some of which are directly in contradiction with the extant provisions in the Code. For example, Principle 11 sets out a procedure for appointment of the chair of the governing body, which is now at odds with the process defined in the Act for the election of the chair. By contrast, the Code does not at present define the precise composition of a university governing body, so the requirements in the Act relating to student and staff members (including TU nominated members) will bear directly on the governing instruments of each university.

Other changes suggested through the consultation process are not in the same category of *required* changes, but were proposed as *desirable* changes, from the point of view of consultees. Aside from the issue of the format of the Code which was widely commented on by consultees, and is covered later in this section, there were a number of suggestions for changes to the Code raised across the consultation. These were either aimed at achieving greater clarity or rectifying what are considered to be omissions. Some suggestions were isolated proposals by a single consultee and these were not taken further in the main, but a number of areas were mentioned a significant number of times, and across all the modes of consultation, and these are outlined below.

4.2.1   Equality and diversity

This was perhaps the most frequently cited issue in the context of changes that should be made to the Code. There has been growing awareness across the whole sector of the need to take more effective action to address issues of equality and diversity, not least in the context of the membership of governing bodies. This was highlighted by the 2015 Equality

---

[16] The majority of the 22 respondents to the open consultation agreed to their responses being published and these are available at: http://www.scottishuniversitygovernance.ac.uk/consultation-process/. See also Appendix Three for a brief overview of what these covered.

Challenge Unit's (ECU) Report on Scottish HEIs' Governing Bodies[17], which concluded that the Code had given added prominence to the issue. Although the ECU found evidence across the sector that institutions were giving greater attention to promoting equality and diversity, particularly in regard to improving the gender balance on their governing bodies and the composition of their senior management teams, there was much work still to do.

In terms of gender balance in the membership of governing bodies in Scotland, the ECU found 34% of members in January 2015 were women. The Scottish Government has indicated that it aspires to achieving 50:50 gender balance on governing bodies, and it has been widely accepted across the HE sector that there should be the a minimum of 40% of both genders among the members of every governing body. The Committee of Scottish Chairs (CSC) is committed to securing a minimum of 40% of both genders among independent members.[18]

While the Code does include in Principle 1 the statement that the governing body shall *'ensure that it observes good practice in regard to equality and diversity'* many consultees commented that this is a relatively muted statement within a list of eight 'responsibilities' contained within this single principle. In contrast, the new CUC Code states that the 'governing body must promote equality and diversity throughout the institution, including in relation to its own operation'. This is one of just seven prime elements, as they are called, within the CUC Code.

There is a clear view that the Code should be revised to give much greater prominence to the role of governing bodies in promoting equality and diversity, and not just in regard to gender balance. This implies the wording should be strengthened and that it becomes an additional Main Principle.

Many of the respondents to the survey and to the open consultation also cited equality and diversity as an area where the Code ought to be strengthened, and that it should focus on not just gender diversity, but the other protected characteristics as well. A small minority of consultees among senior management and lay members had concerns about the difficulty for institutions of identifying appropriately skilled female lay members, and the lower number of applications among women.

The ECU provided a particularly detailed response to the open consultation on this area, and in particular called for governing bodies to now focus on other protected characteristics in the Code, to promote diversity beyond gender.

> *'An explicit requirement for governing bodies to now focus on other protected characteristics in the Code [beyond gender] could have a similar impact and would support governing bodies to meet legislative requirements as well as their own and the government's ambitions.'* ECU response

---

[17] Equality Challenge Unit, (2015). *Equality and Diversity in Scottish Higher Education Institutions*. Available at: http://www.ecu.ac.uk/publications/governing-bodies-equality-and-diversity-in-scottish-higher-education-institutions/.

[18] See http://www.scottishuniversitygovernance.ac.uk/wp-content/uploads/2015/04/CSC-Policy-Statement-Gender.pdf.

4.2.2 The collective and trustee responsibility of governors

The Code makes clear in Main Principle 6 that all members of the governing body *'shall exercise their responsibilities in the interests of the institution as a whole rather than as a representative of any constituency'*. What is not also said is that because universities are charities, the members of the governing bodies carry the responsibility of charity trustees under Charity Law. It follows that the general provision in the Code is underpinned by a legal obligation on the members of governing bodies to act in an impartial manner in the general interest of the whole institution.

Many consultees suggested that Principle 6 needs to be expanded as it does not give sufficient guidance for students and staff at present. Additionally further guidance may be required in light of the provision in the 2016 Act for trade union nominated members joining governing bodies, some of whom could believe their role is to act as delegates for the members of the trade union which nominated them. In practice, as trustees, no members of the governing body, be they staff, students or lay members, can act to promote a sectional interest and many consultees suggested this fact needed to be made more explicit in the Code and better guidance provided. A number of staff and student governing body members also highlighted the difficulty they face in trying to explain this to their colleagues.

This was also a commonly raised issue among respondents to the survey and open consultation, for instance survey responses included the following:

> *'More clarity [needed] around role of Staff 'Representatives' on Court (e.g. regarding consulting and reporting back to colleagues).'*
>
> *'Would like to see renewed emphasis on the collective responsibility of the governing body.'*

In its response to the open consultation ICSA: The Governance Institute also suggested improving the guidance in Principle 6, and suggested a code of conduct for governing body members.

> *'…this might be a suitable place to improve guidance on managing conflicts of loyalty. In addition, a revised code could deal with the ongoing importance of collective responsibility and the issues of confidentiality. Perhaps these factors could be aligned to a code of conduct for the governing body?'* ICSA: The Governance Institute response

A similar point was made by the General Teaching Council for Scotland in its submission, which called for consideration of a standard code for members of institutions' governing bodies *'setting out the standards of conduct, behaviour and integrity expected of a member of such a body'* as there are in other sectors.

4.2.3 Governing bodies' oversight of academic matters

The Code is not clear on the role of the governing body in regard to the academic work of HEIs, although it makes clear its responsibility for determining the institution's future direction. This lack of clarity is unhelpful and has led to problems in some institutions in

regard to the respective responsibilities of the Court and Senate or equivalent. As the Royal Society of Edinburgh stated in its submission:

> 'It is our view that without seeking to run academic matters, the governing body needs to satisfy itself that the academic board is doing its job properly. It would be helpful for the Code to seek to establish some general principles concerning the roles and responsibilities and lines of demarcation between both bodies…' Royal Society of Edinburgh submission

This issue was raised during some of the consultation sessions, and was also a significant issue when the CUC Code was revised in 2014, leading to the inclusion of one of the seven elements in the Code to cover this issue. A revision to the Scottish Code to introduce similar clarity would clearly be useful. As two of the respondents to the survey suggested:

> 'A new section should be included on general principles that should govern the relationship of the governing body with the Academic Board/Senate and their respective roles and responsibilities. This is an area where there is often confusion. While Academic Board/Senate is the arbiter on academic matters as governing body members are the charity trustees with ultimate responsibility for the governance of the HEI a recognition of each bodies responsibilities would provide greater clarity.'
>
> 'Consideration should be given to the establishment of principles in relation to the interaction and accountability of each body to the other.'

Some consultees went further and suggested that a revised Code needs to strike a better balance between the primacy of Senate on academic matters, and that too often governing bodies and senior management have been allowed to ignore Senate on matters of academic portfolio and character.

4.2.4 The 'status' of different categories of members of governing bodies

During many of the consultation sessions, particularly those with staff elected representatives, it was also frequently raised by staff members that they do not feel that all members of governing bodies are treated in the same way. In particular it was reported that staff and student members are often precluded from involvement in the discussion of certain topics and are not permitted to be members of certain committees, most often those concerned with financial or staff issues. For a number of HEIs this 'prohibition' is formalised in the Institution's Governance Articles and Instruments. This, it was suggested, is unacceptable and should be the subject of explicit guidance in the Code.

The national trade unions also raised this issue of 'two tier' governing bodies, where some members were allowed to be members of some court sub-committees, but not other members. Staff members in particular raised concern that they were typically not allowed to participate in crucial sub-committees, such as finance and remuneration (see also the section below).

In formal governance terms, all members of the governing body carry exactly the same responsibilities and liabilities and all are equally trustees of the university as a charity (or directors of the company where the HEI is a registered company). There will be instances when a governor may have a personal interest in a matter under consideration by the

governing body or one of its committees, or by not being involved in a particular committee where there is an on-going potential conflict of interest. This can be addressed through the 'declaration of interest' procedure allowing a governor to withdraw while such an issue is under consideration.[19]

As the Royal Society of Edinburgh stated in its submission to the consultation:

> '…all governors owe their loyalty to the institution as a whole, and should not act as delegates of a sectional interest. This behaviour is more likely to be achieved if they are involved as fully as possible in the work of the governing body, with proper arrangements for recognition and management of conflicts of interests.' Royal Society of Edinburgh submission

A number of respondents to the survey also highlighted that greater clarity on this point would be a useful addition to the Code, to ensure all governing body members are able to make an effective and equal contribution, and that they are supported in doing so.

> 'The Code should also ensure best practice across the sector to ensure that governing bodies work effectively, with all staff (including trade union nominees) accorded equal membership status. This would help address the issue where governing body sub-committees do not reflect the make-up of the governing body in its entirety. '

> 'All staff members should be provided with sufficient time to perform their duties on behalf of Court through allocation of workloads, additional departmental support, cover arrangements or facility time.'

4.2.5 Transparency and setting values and behaviours

There were many comments from consultees during the institutional visits to the effect that the governance process should be more open. The staff governing body members and local trade union representatives in particular suggested that there was too much secrecy surrounding the work of their governing body and that too much of their business was held to be confidential.

The open call submissions from the trade unions made this point strongly and called for wider involvement in and democratisation of the governance process. This was only raised in a handful of the sessions with lay members or senior management, and there are various developments in practice at a number of universities designed to increase understanding of the role and work of the governing bodies.

As a standard expectation, the national trade union representatives felt that governing body meetings ought to be more open and transparent (similar they suggested to those the health sector) and this should be enshrined in the Code. They acknowledged some items will need to be reserved, but this should be the exception rather than the rule. In an ideal scenario,

---

[19] Additionally, Audit Scotland's submission made some specific suggestions to improve the guidance for managing conflicts of interest (see page 3).

meetings would be held in public, but failing that there should be an opportunity for a number of places to be balloted for interested staff and stakeholders to attend.

Audit Scotland also queried why the Code refers in Min Principle 4 to 'reserved' matters that will not be open to discussion by the whole governing body, as they say this is an unusual approach to governance. They say that '*…[no] significant issues affecting the HEI (including commercial or staff-related matters) should not be considered by the governing body as this would compromise the effectiveness of the governing body in exercising it corporate oversight role.*'

In addition, a few consultees commented during the institutional visits on what they saw as an important aspect of the role of the governing body, namely setting the values of the institution and the expectation of behaviours based on the highest standards as laid out in the Nolan Principles[20] which are incorporated in the Code. The inclusion of a new section on values, standards and behaviours might be an issue to be given greater prominence in any revisions to the Code. Many of the submissions to the public consultation were of the view that a revised Code ought to begin with a section on why universities exist, their values, what they are about, and why good governance is important. It would be important to stress, in their view, that universities are there to serve the public good, and that their vision and ethos should be central to that.

4.2.6 Remuneration Committees

Trade unions nationally and local representatives are in favour of reform to the way Remuneration Committees operate in universities. In particular they feel they ought to operate in an even more open way. Their criticism is that the process is not open and has led to what they regard as unacceptably generous salary awards, particularly to a few university Principals. They believe that the membership of these committees should include a staff member, who they believe will help ensure what they would regard as more acceptable decisions being taken in respect of senior staff salaries.

The point was also made by a number of the staff governors and a few of the students consulted, along with the broader point that excluding certain categories of governing body member from particular committees creates an unhelpful distinction. As the Royal Society put it in their response to the consultation:

> '*The current Code is silent on the role staff and student governors should play on Committees, other than the requirement that their representatives should sit on the panels recruiting new chairs and principals. Current practice varies widely. We propose that the revised Code should seek as a general principle to keep to a minimum any restrictions on staff and student governors' participation in governing body committees.*' Royal Society of Edinburgh

---

[20] The Nolan Principles are: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership. Holders of public office should exhibit these principles in their own behaviour and actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs. See also the Committee for Standards in Public Life, available at: https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life.

Composition of remuneration committees was also raised at many of the meetings with the lay members and senior management. They were aware of the trade union view on the matter and wished to record their attitude to this question. In general senior management and the majority of lay members expressed strong opposition, considering it would be a conflict of interest, particularly in the case of the inclusion of a staff member on Remuneration Committees, which was felt to be inappropriate. A few in this group were unconcerned at the idea of a staff or student governor being directly involved in determining senior staff remuneration. However many pointed out that, in line with the requirements of the current Code, they had adopted a much more open process to setting senior salaries than in the past, and now produced a full report to their Court meetings and required formal approval for the approach the Remuneration Committee proposes to adopt. Chairs or their equivalents ask for views from all governing body members, including staff and student governors, on the performance of the Principal before the annual salary review meeting.

One university has one of the student governors as an observer at Remuneration Committee meetings. Another has an independent observer with professional competence of pay structures in large organisations, who sees all the papers and writes a commentary on the work of the committee.

4.2.7 Senior staff attending governing body meetings

During the institutional visits, a number of staff governors, and several local trade union representatives, raised the issue of senior members of the institutions' executive teams, such as Vice Principals and directors of professional services, routinely attending meetings of the governing body and participating in all the discussions (not just on particular agenda items within their remit). The current Code allows Principals to bring in members of the executive to attend meetings, although strictly as observers.

The national trade unions also felt that in many cases the spirit of this was being abused on two fronts: firstly to skew the numbers of people in the room and ensure that management could outnumber other voices in the room; and secondly observers were often being allowed to speak far too extensively in meetings. It was suggested that the Code ought to consider how this can be curbed.

The point made was that while particular senior managers needed to contribute to the consideration of matters which directly related to their responsibilities, they should not be in attendance throughout all meetings. The same point was considered by the von Prondzynski Review which recommended that *'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.'* (The Review Report also did not allow for the University Secretary, who is Secretary of the Court, or the Finance Director to be present at all meetings).

Practice in this regard varies between universities, and there are many examples of senior executive members of the university, perhaps one or two Vice Principals with particular strategic responsibilities, also being members of the governing body.

Routinely including a substantial number of executive team members at all governing body meetings, while providing people who can give authoritative advice, has the further disadvantage of making the size of the meeting unwieldy. The question of the size of governing bodies was also raised by a number of consultees across the various modes of consultation, with many suggesting that a maximum of 25 is too large and should be reduced to maximise effectiveness.

4.4.   Reflecting legislative or regulatory change in the Code

The *Higher Education Governance (Scotland) Act 2016* lays down certain specific requirements, some of which are directly in contradiction with the extant provisions in the Code. So, for example, Principle 11 sets out a procedure for the appointment of the chair of the governing body which differs from the process now defined in the Act for the election of the chair. By contrast, the Code does not define the precise membership of a university governing body so the requirements in the Act relating to student and staff members (including trade union nominated members) will bear directly on the governing instruments of each university.

There was much discussion of how best to relate the Code to the requirements   of   the 2016 HE Governance Act. As is noted above, the Code must be amended to remove anything that contradicts the requirements of the Act but there were contrasting views on whether the provisions of the Act should be 'written into' the Code or whether the Act should simply stand alongside the Code as legislation that each HEI is obliged to follow. The argument for the latter point of view is that the Code is 'owned' by the sector and can be amended as is thought best, within the framework of the law. By contrast, the Act is a product of Government intent and could only be changed or added to in the future by a further decision of Government. The majority inclined to this latter viewpoint although the trade union view differed strongly in this regard. They felt the Act should be fully written into the Code or even replace it.

In reflecting on this issue, the Steering Committee will need to take account of the nature of the Code itself. It is the statement of key principles and of good practice which any well run university would expect to comply with, but perhaps not in every single detail, given the diversity of institutions. While compliance with its principles is a condition of SFC grant, it does not carry the force of law in the way that applies to the university's governing instruments or, of course, the 2016 Higher Education Governance Act. Furthermore, as has been noted already, many of the provisions in the Act will require changes to the governing instruments of each university rather than to the Code itself. The Code would, however, be negligent if it did not refer to the need to take account of the provisions of the Act where this bears on particular sections of the Code.

There were many views expressed about the practical difficulties of implementing the provisions of the Act, some of which might be taken to bear on the role of the Code. Few consultees saw any difficulty in adding two trade union representatives or a second student to the membership of governing bodies, although in a few cases, where there were already 24 or 25 members, the relevant HEI would have to consider whether they should remove one or more places from the existing membership structure.

The greatest potential problems envisaged relate to the requirement in the Act for the Chair of the governing body to be elected, with the electorate defined as all the staff and students of the institution. Many lay members and senior executives expressed concern that this was not a process which would necessarily result in the appointment of a suitably qualified person for the key post of Chair of the governing body. By contrast, the trade union representatives, many of the student consultees and a number of staff governors, favoured this development which they felt would 'democratise' the governing body. The practical problems of the new process for electing the Chair were, however, widely recognised. So, for example, one problem would be deciding on the definition of eligible staff and student voters (for instance how part-time staff or students have to be before they were ineligible to vote). There were many other issues raised including the process leading up to the election (such as hustings, election manifestos etc), the first loyalty of the Chair (to the governing body or the electorate?) and issues relating to remuneration of Chairs (including whether this could in theory result in the Chair becoming a university employee).

Some of the consultees wanted the Code expanded to give guidance on such issues of the implementation of the 2016 Act, although the majority were against detailed guidance being included in the Code, with the emphasis being on each HEI carrying responsibility for compliance with the Act. A minority argued that given legislation has been introduced to specifically deal with HE governance in Scotland, it is logical that the new Code should be derived from the key principles of the legislation. Those with this view argue that if the new Code does not refer extensively to the new legislation it will be irrelevant, and given this, the Code ought to set out some guidance on how elections (for staff representatives and also the Chair) be conducted.

A selection of the views of governing body members who responded to the survey included the following on how the Code should be revised in light of the Act:

'…the Code will have to reflect the provisions of the HE Governance Act 2016, particularly with regard to appointment of chairs and also other aspects of the composition of the governing body. Given that it is anticipated that there will be a four-year time frame for the implementation of some of the key elements of the Act, incorporating these changes may be somewhat tricky but I think it is essential if the Code is to be up to date and fit for purpose.'

'We need to be careful the Code does not become overly prescriptive. There needs to be a level of autonomy in some areas for example selecting the Chair of the Court. Each institution has lots of similarities and systems and processes however they all each have their own individuality and it is important the code does not stifle that.'

'…there will clearly need to be changes to the guidelines to reflect the Higher Education Governance Act. Some of the elements of that Act are, of course, inimical to good governance so there will be a need to be clear that some elements (e.g. the arrangements for the appointment of the chair) reflect regulatory requirements rather than principles of good governance.'

4.5.   Structure, format and presentation of the Code

There were many comments made during the institutional visits about the structure, format and presentation of the Code. The general view was that it was well written and easy to read, but rather too long and could be better structured and made more accessible.

A distinction was drawn between the principles, which everyone acknowledged were at the core of the Code, on the one hand, and the supporting guidelines and good practice examples on the other hand. Whilst the latter two were generally regarded as useful, several consultees thought the supporting guidelines were too detailed and prescriptive and varied in detail for different principles. The good practice examples were found to be very useful by some, and particularly useful to have all the information in one source, but equally it was recognised that they could become dated as governance practice moved on. The general view was that they might better reside on a governance website rather than being incorporated in the Code. A few consultees thought the supporting guidelines could also be lodged on a website which would reduce the Code effectively just to the Principles (which might be expanded to take account of the issues raised above), though this was not the most common view. There were some comments about consistency and style. Why, for example, some queried are Principles 16, 17 and 18 all under the heading 'effectiveness'. Others suggested every Principle should have supporting guidelines and some also wanted every Principle to have a good practice example.

The national trade union representatives felt it would be positive if genuine examples of good governance (best practice) were captured and shared across the sector, to help raise the bar of activity; however they were less convinced by the current format of capturing them as case studies within the Code. Indeed, it would probably be better for them to exist in an online repository either maintained by CSC or the Leadership Foundation.

Responses on this issue to the survey included the following.

> '…it is important that the Code continues to reflect current good governance practice, as one of its principle strengths is the dissemination of such practice.'
>
> 'Perhaps more information on student membership, best practice for students, and how governance bodies should make discussions and inductions clear to student members.'

However, of greater significance was the observation made by a number of consultees that the requirement by the SFC that *'complying with the Code is a condition of grant'* raised the question of what exactly has to be complied with, despite SFC guidance which states that *'institutions are expected to comply with the main principles and follow closely the supporting guidelines'*.[21] Clearly the principles are in this category but the status of the supporting guidelines is less clear. In this context, several people drew a contrast with the new CUC UK Code[22] which uses the words 'must' or 'should'. The first word is attached to mandatory requirements particularly relating to adherence to legislation or to Funding Council conditions of grant. The use in the Code of 'should' attaches to matters which are

---

[21] Scottish Funding Council (2014). *Good Practice in Higher Education Governance*. SFC/GD/15/2014. Available at: http://www.sfc.ac.uk/communications/Guidance/2014/SFCGD152014.aspx.
[22] CUC (latest 2014). *The Higher Education Code of Governance* available at: http://www.universitychairs.ac.uk/wp-content/uploads/2015/02/Code-Final.pdf.

regarded as best practice and assist the achievement of the mandatory requirements. Optional suggestions for improving governance are listed with the use of the word 'could'.

It is evident from the comments made during the institutional engagements that while there is very strong support for the content of the Code, many people feel the presentation could be improved in a number of ways and that it would benefit from being reduced in length. There was also broad support for making it clearer what part of the Code is in effect compulsory and providing guidance on this point in the introductory section of the Code.

Additionally, a number of consultees, particularly among staff and students, felt that the Code's existence and importance should be more widely known and better understood within institutions, beyond governing body members. They believed that promoting better understanding about governing bodies will become increasingly necessary in light of forthcoming governance changes, particularly the election of chairs of governing bodies by all staff and students. Some suggested that a short form of the document in a handbook or booklet format could be a useful addition. For instance governing body members commented that: '*while clear, it's too long at present to easily be referred to*' and a '*handbook would be much more useful and much less dense*'. Relatedly, as the Royal Society of Edinburgh pointed out in its submission to the review, institutions could also do more to publicise improvements made to their governance externally to the general public, as well as to internal audiences (for instance following governing body effectiveness reviews).

However, at the same time, many of the consultees, particularly among the lay members and senior manager groups, were anxious to stress that their institution was an autonomous body, very different from any other HEI. This led to the very widely stated view that the Code should not be too prescriptive and should allow sufficient flexibility for each institution to meet its own particular needs and circumstances in implementing the Code.

Finally, a number of consultees pointed out that the annex to the Code which contains whistleblowing guidance should be updated in line with more recent public sector guidance available, particularly on protecting the confidentiality of whistle-blowers.[23]

---

[23] The Code could also refer to the whistle-blowing charity Public Concern at Work, see http://www.pcaw.co.uk/.

5.   Overall Conclusions

5.1.   The current Code

The overwhelming view from the consultees expressed both in the course of the institutional visits and the survey of governing body members is that the Scottish Code of Good Higher Education Governance ('the Code') has proved useful and has helped improve the quality of governance in Scottish higher education institutions (HEIs). Many people feel there is little need for change, but a majority of consultees believe there are areas in which relatively minor changes and additions would improve the Code.

The introduction of the Code in 2014 undoubtedly focussed attention on university governance since it required institutions to check that their practices were in line with the requirements of the Code. After a further two years of experience, and prompted by developments elsewhere in the sector and beyond, many universities have recognised that while the main principles of good governance are likely to persist, there will always be refinements of interpretation and developments in good practice which should be considered and adopted. As one governing body put it: '*the Code is flexible and emphasises principles of governance. These have not changed over the last three years'*.

The three year review of the Code is therefore a natural point to refresh the guidance it offers, in addition to considering how best to respond to the imperatives of the 2016 Act. As has been noted above, there is a need to at the very least amend the Code to remove any conflicts with the provisions of the Act, but in addition the Steering Group will need to decide whether or not more of the Act should be directly reflected in the Code.

The Steering Group will have noted the strong counter view expressed by the trade unions, in both their open call evidence and consultative discussions with national and local representatives, that the Code has proved ineffective and needs a complete rewrite.

5.2.   Potential changes

The main principles within any governance Code are based on enduring values and provide the cornerstone to guide the fundamental actions and behaviours of the institution. However there is scope for a change in emphasis. Therefore as noted previously, ensuring equality and diversity is a fundamental aspect of good governance suggests it should be established as a principle in its own right rather than forming part of Principle 1.

The Steering Group many also wish to reflect on whether all the current 18 principles in the Code are truly principles or perhaps that some are statements of best practice. So, for example, Principles 2 and 3 relating to the legal obligations of the governing body and the conduct of members are very clearly statements which are fundamental tenets of good governance. By contrast, Principle 12 relating to the induction of new members and the provision of training is less a principle of good governance and rather more a statement of good practice. A clearer separation of the key principles or fundamental elements of good governance from the good practice guidance would be a helpful clarification.

On a related issue, there were numerous comments made about the supporting guidance which was seen by some to be overly detailed and too prescriptive. The problem always with providing guidance is adequately to reflect the very different nature and history of a

diverse range of institutions which comprise the Scottish higher education system. At the same time, as we were often reminded, each institution is protective of its autonomy and does not wish to be directed in detail on how it should manage its affairs. The Steering Group may wish to consider whether the supporting guidelines could, with benefit, be clarified and perhaps made less detailed, bearing in mind the growing maturity of the governance processes across all of Scotland's higher education institutions.

The good practice examples are the third element of the Code. While many people commented on the value of providing these 'exemplars', it was also recognised that good practice develops and changes and that it is important to keep examples up to date. For this reason many consultees agreed that the good practice examples should be held on a governance website. The whistle blowing annex, which was drawn from the 2009 CUC Code, does need to be amended as best practice has moved on in recent years.

In general, the view of the consultees was that the structure and format of the Code should be amended to produce a crisper, more focussed and up to date document, which is briefer than the current Code. Greatest prominence should be given to the principles of good governance, with less detailed supporting guidelines and with the good practice examples possibly removed to a governance website where they can more easily be regularly updated.[24] Consideration would have to be given on how to publicise the good practice examples to ensure that governing body members know where to find them in the first instance and be advised when they are updated. This source might also contain other advice and guidance such as, perhaps, on the process which HEIs will need to follow for the election of the Chair of their governing body.

---

[24] A list of good practice examples cited by survey respondents is included at Figure 12 in Appendix Two.

Appendix One Methodology

A1 Overview

The evidence gathering to support the review of the Scottish Code of Good Higher Education (HE) Governance took place between June and October 2016. The essentially qualitative means of consultation were as follows:

- Consultative **visits** were undertaken to all 19 Scottish HEIs during the period June to October 2016. Semi-structured, in-depth and non-attributable individual and group interviews took place during the visits with a total of 292 individuals. Discussions at the HEIs took place with four constituent groups (although the number of individuals consulted overall and within individual meetings of constituent groups varied per institution):
  - Lay governors, including chairs and convenors
  - Principals, university secretaries and other senior management team members
  - Staff – including (elected) governing body members, both academic and non-academic; local trade union representatives (some of whom were also existing staff elected members of governing bodies, though the majority were not); and a small number of other interested members of staff
  - Students, mainly local student association representatives
- Consultative **meetings** with national trade union and student representative bodies:
  - Educational Institute of Scotland
  - National Union of Students
  - Scottish Trade Union Congress
  - University and College Union
  - Unison
  - Unite
- An **e-survey**, circulated via the Scottish HEIs, to current and recent governing body members produced 117 responses from governing body members of all types, with at least one response received from each of the HEIs

- An **open consultation** inviting the views of any individuals or organisations with an interest in HE governance in response to a set of specific questions. A total of 22 responses were received, 19 from organisations and three from individuals.

A2 Key lines of enquiry

The key lines of enquiry for the review across all the means of consultation focussed on:

- How well the Scottish Code of Good HE Governance has served its purpose

- Effects of the Code on the governance of Scottish HE

- Any changes to the Code which could help improve the governance of Scottish HE

- Any changes to the Code required to reflect legislative or regulatory changes made since 2013, specifically the 2016 Act

- The format and presentation of the Code.

the scottish code of
GOOD HE GOVERNANCE

A3 Institutional visits

The figure below sets out the dates of the institutional visits and the roles of those consulted. In total 292 individuals were consulted through the visits.

Figure 2 Institutional visits

Institution	Visit date	Consultees' roles
Abertay University	05/10/2016	• 5 Lay members • 4 Senior management • 5 Staff (including 2 local trade union representatives) • 5 Students
Edinburgh Napier University	13/09/2016	• 4 Lay members • 3 Senior management • 5 Staff (including 2 local trade union representatives)
Glasgow Caledonian University	22/09/2016	• 5 Lay members • 3 Senior management • 3 Staff (including 3 local trade union representatives) • 4 Students
Glasgow School of Art	10/10/2016	• 3 Lay members • 4 Senior management • 5 Staff (including 4 local trade union representatives)
Heriot-Watt University	30/06/2016	• 1 Lay members • 8 Senior management • 3 Staff (including 3 local trade union representatives) • 1 Student
Queen Margaret University	20/09/2016	• 4 Lay members • 6 Senior management • 11 Staff (including 5 local trade union representatives) • 3 Students
Robert Gordon University	06/10/2016	• 5 Lay members • 4 Senior management • 8 Staff (including 3 local trade union representatives) • 4 Students
Royal Conservatoire of Scotland	11/10/2016	• 5 Lay members • 4 Senior management • 4 Staff (including 1 local trade union representatives)
SRUC	12/09/2016	• 1 Lay members • 2 Senior management
The Open University in Scotland	25/08/2016	• 1 Lay members • 5 Senior management • 3 Staff (including 1 local trade union representatives) • 1 Student

Institution	Visit date	Consultees' roles
University of Aberdeen	1/9 and 30/9/2016	• 2 Lay members • 7 Senior management • 5 Staff (including 3 local trade union representatives) • 1 Student
University of Dundee	21/06/2016	• 3 Lay members • 3 Senior management • 4 Staff (including 1 local trade union representatives) • 4 Students
University of Edinburgh	12/09/2016	• 2 Lay members • 3 Senior management • 5 Staff (including 3 local trade union representatives) • 1 Student
University of Glasgow	15/09/2016	• 3 Lay members • 3 Senior management • 5 Staff (including 2 local trade union representatives) • 2 Students
University of St Andrews	28/06/2016	• 4 Lay members • 4 Senior management • 6 Staff (including 3 local trade union representatives) • 1 Students
University of Stirling	23/09/2016	• 6 Lay members • 5 Senior management • 9 Staff (including 3 local trade union representatives) • 3 Students
University of Strathclyde	10/10/2016	• 4 Lay members • 5 Senior management • 12 Staff (including 4 local trade union representatives) • 2 Students
University of the Highlands and Islands	14/09/2016	• 6 Lay members • 6 Senior management • 2 Staff • 2 Students
University of the West of Scotland	28/09/2016	• 4 Lay members • 5 Senior management • 9 Staff (including 4 local trade union representatives) • 3 Students

A4 Survey of Governing Body Members

Part of the evidence-gathering for the review was a short survey, which was circulated to current and recent members of Scottish HE institutions' governing bodies by the HEIs, for completion during September and October 2016. The survey consisted of three sections with a mix of closed and open-ended questions which are listed below.

A total of 117 governing body members responded to the survey. A minimum of one response was received from all the HEIs. The number of responses ranged from 15 at one institution to one in another (the median number of responses received per HEI was seven). Proportionately the types of governors who responded was similar to the composition of individual governing bodies. For instance 54% were lay members and 20% staff members, with fewer chairs or convenors (11%), senior managers (4%) and student members (6%). The majority of respondents were current governing body members, with just six former members. Approximately 30% of respondents had been a member of the governing body for one year or less, 40% for between two and five years, and 24% for five plus years.

Key findings from the survey are discussed in the body of this report and further details including the data tables are shown in Appendix Two.

Section 1: About you and your institution
- Which institutional governing body are (or were) you a member of?
- How long have you been a member of the institution's governing body?
- What type of governing body member are (or were) you?
- How familiar are you with the content of the Scottish Code of Good HE Governance?

Section 2: Perceptions of the existing Code
- How useful do you find the Code?
- How effective is the Code for ensuring good governance for the following:
- To your knowledge, what if any changes have been made to your institution's governance in the past three years as a result of the Code?
- Are there any aspects of the Code which you consider to be particularly difficult to comply with?

Section 3: Any changes you would like to see to the Code
- What if any changes should be made to the Code and why; or why not if you think that no changes are needed?
- The Code is organised into Main Principles and Supporting Guidelines and includes good practice examples. To what extent do you think each of these areas requires changes to be made?
- Should the Code be changed to reflect any of the provisions in the Higher Education Governance (Scotland) Act passed by the Scottish Parliament in 2016 (or any other regulatory or legislative change made over the past three years)?
- Are there any examples of good governance practice from your own or other HE institutions, in Scotland or elsewhere, which you would particularly highlight?
- What is the key thing you would you like to see coming out of this Review of the Scottish HE Code, and why?

A5 Public Consultation

The evidence-gathering included a public consultation for any individuals or organisations with an interest in the Scottish Code of Good Higher Education (HE) Governance to submit their views during August and September 2016. Consultation questions were:

1. How well has the Scottish Code of Good HE Governance served its purpose?

2. What effects has the Code had on the governance of Scottish higher education? Please provide specific examples of any improvements it has brought, or ways in which it has failed to serve its purpose.

3. What (if any) changes to the Code would help to improve the governance of Scottish higher education? Please provide evidence of how any suggested changes would improve governance.

4. Should the Code be changed to reflect the Higher Education Governance (Scotland) Act passed by the Scottish Parliament in 2016, or any other legislative or regulatory changes made since 2013? If so, what changes would you like to see?

5. Does anything need to change in the current Code to improve its clarity or presentation, even if not changing the substance?

6. Is there any good practice, in higher education or other sectors and from Scotland or elsewhere, which you would particularly highlight?

7. Please provide any other relevant comments you may have.

Nineteen organisations and three individuals responded to the open consultation. The majority of the organisations, which are listed in the figure below, agreed to their responses being published and these are available from the Scottish Code website[25].

Figure 3 Respondents to the open consultation

Organisation
Audit Scotland
Educational Institute of Scotland (EIS)
Equality Challenge Unit
General Council of the University of Edinburgh
General Teaching Council for Scotland
Institute of Chartered Secretaries and Administrators (ICSA) - The Governance Institute
NHS Education for Scotland
Royal Society of Edinburgh
Scottish Trade Union Congress (STUC)
Small and specialist institutions - The Glasgow School of Art, The Royal Conservatoire of Scotland and Scotland's Rural University College
UNISON Scotland
University and College Union (UCU)
University and College Union, Queen Margaret University Branch
University and College Union, University of Glasgow Branch
University of Aberdeen
University of Edinburgh
University of Glasgow General Council
University of St Andrews
University of St Andrews, Business Committee of the General Council
University of Stirling Students' Union
University of Strathclyde

---

[25] Available from http://www.scottishuniversitygovernance.ac.uk/consultation-process/.

Appendix Two Survey Results

The main data tables and some of the qualitative responses from the survey of current and recent governing body members are included below, and these are also discussed in summary in the body of the report. Verbatim qualitative responses can be made available if required by the Steering Group.

<u>**Section 1: About you and your institution**</u>

Figure 4 Survey response by higher education institution

Q1: Which institutional governing body are (or were) you a member of? (please select from the drop down list)		
Answer Options	**Response Percent**	**Response Count**
University of Aberdeen	6.8%	8
Abertay University	6.0%	7
Edinburgh Napier University	2.6%	3
Glasgow Caledonian University	9.4%	11
Glasgow School of Art	0.9%	1
Heriot-Watt University	12.8%	15
Queen Margaret University	6.8%	8
Robert Gordon University	7.7%	9
Royal Conservatoire of Scotland	6.8%	8
SRUC	2.6%	3
The Open University in Scotland	0.9%	1
University of Dundee	7.7%	9
University of Edinburgh	3.4%	4
University of Glasgow	3.4%	4
University of St Andrews	5.1%	6
University of Stirling	6.0%	7
University of Strathclyde	3.4%	4
University of the Highlands and Islands	1.7%	2
University of the West of Scotland	6.0%	7
	answered question	**117**

Figure 5 Survey response by time on governing body

Q2: How long have you been a member of the institution's governing body? (please select from the drop down list)		
Answer Options	Response Percent	Response Count
Less than 1 year	16.7%	19
1 year	14.0%	16
2 years	14.0%	16
3 years	7.9%	9
4 years	9.6%	11
5 years	7.9%	9
6 years	7.0%	8
7 years	2.6%	3
8 years	7.0%	8
9 years	2.6%	3
10 years	2.6%	3
More than 10 years	2.6%	3
No longer a member	5.3%	6
answered question		**114**

Figure 6 Survey response by type of governor

Q3: What type of governing body member are (or were) you?		
Answer Options	Response Percent	Response Count
Chair / Convenor	11.1%	13
External / lay member	53.8%	63
Senior manager member	4.3%	5
Staff (including Senate / Academic Board) member	19.7%	23
Student member	6.0%	7
Other (please specify)	5.1%	6
answered question		**117**

Figure 7 Familiarity with Scottish Code

Q4: How familiar are you with the content of the Scottish Code of Good HE Governance?		
Answer Options	Response Percent	Response Count
Extremely familiar	15.9%	18
Very familiar	45.1%	51
Moderately familiar	34.5%	39
Slightly familiar	4.4%	5
Not at all familiar	0.0%	0
Please provide any additional comments you wish to make.		18
answered question		**113**

Figure 8 Utility of Scottish Code

Q5: How useful do you find the Code?		
Answer Options	**Response Percent**	**Response Count**
Extremely useful	8.9%	10
Very useful	48.2%	54
Moderately useful	33.0%	37
Slightly useful	9.8%	11
Not at all useful	0.0%	0
Don't know	0.0%	0
Please provide reasons for your response.		51
	answered question	**112**

Section 2: Perceptions of the existing Code

Figure 9 Effectiveness of Scottish Code

Q6: How effective is the Code for ensuring good governance for the following:						
Answer Options	**Extremely effective**	**Very effective**	**Moderately effective**	**Slightly effective**	**Not at all effective**	**Don't know**	**Response Count**
For you as a governing body member	5	53	28	7	0	1	94
For your institution	11	48	23	6	1	3	92
For Scottish HE	5	42	22	9	0	14	92
Please provide specific examples of any improvements the Code has brought, or ways in which it has failed to serve its purpose.							38
					answered question		**94**

Respondents were also asked to expand on their response by providing specific examples of any improvements the Code has brought, or ways in which it has failed to serve its purpose. A summary of the 38 responses made is included below.

Figure 10 Examples of the effects of the Scottish Code

Improvements as a result of the Code	Ways it has failed to serve its purpose
Measuring and improving effectiveness	**Governance effectiveness – force of the Code**
• *[The] key benefit to my mind was the serious and comprehensive approach taken by the University to review all of its existing practices in the light of the new Code and to amend those practices where considered necessary, with consequent reassurance to senior management and Court members*	• *There are well publicised examples where Boards have failed to fully comply with the Code and action has required to be taken by external authorities. This creates a lack of confidence by the public in the governance of HE and does reputational damage to the HE Sector*
• *The Code has ensured that good practice is spread more widely across the sector. Students are at the heart of the decisions made by the governing body. There is effective financial accountability and oversight of the processes involved in the day-to-day running of the institution*	• *Its main 'failure' (for which I found not blame it) has been its failure to convince Government that further legislation was unnecessary. In this sense, its strength (consistency without uniformity) has not carried enough weight politically*
• *When going through our own effectiveness review it was useful to have a set of practices that are efficient and best practice*	• *Codes of governance cannot, even in principle, ensure good governance. History is littered with examples of institutions of all kinds, including universities, that have been badly governed whilst notionally subject to a governance Code. The Scottish Code is certainly an aid to good governance, but it cannot be more than that*
• *The attempts to quantify the outputs of the group and to look at effectiveness of individual members*	
• *It has served to reinforce the good practices evident at Court ensuring the University has a clarity of purpose and a well communicated set of KPIs which are the agreed reference points for monitoring institutional performance*	• *A lot of common sense but a bit too tick box and politically pc. Short on pragmatism, individuality, innovation and is unlikely to add to improvements in either academic standards or efficiency in running the Institution*
• *It has caused us to benchmark our current practices against the Code and address a few gap areas*	• *It is disappointing to see that two of the 'ancient' universities chose to ignore the Code's requirements that the Chair of the Governing body should not also chair the remuneration committee.*
• *It ensures that HE institutions are aware of their responsibilities, and enables them to take any steps to strengthen weak areas*	
• *….we took the opportunity of its publication to review all aspects. This resulted in a greater attention to our Skills Matrix, to the precision of our Remuneration Policy and to the rigour and staff/student involvement in the recruitment and appointment of our new Principal*	
Promotion of equality & diversity	**Limited impact on equality & diversity**
• *It is positive that the Code refers to equality and diversity, particularly in the composition of the governing body.*	• *There is still much progress to be made in increasing the diversity of appointments*
• *Gender equality has become a live issue for governing bodies to address, due in part to the Code*	• *[T]he achievement of equality and gender balance, for example, are yet to come*
• *There is better gender balance on boards*	• *More action is required to improve the situation*

Improvements as a result of the Code	Ways it has failed to serve its purpose
• *Diversity issues have been acted upon in a positive way*	
Better clarity on roles • *I am confident that governing bodies collectively and individually have a greater understanding of their role and responsibilities as the charity trustees and ultimate decision making body of HEIs* • *The Code has drawn attention to the central roles of Chair and Principal and the responsibilities of each* • *It has also made possible highly effective contributions by representatives of the student body* • *The advice on possible payment to the Chair of Court and lay members was influential for a sensitive issue* • *[By] 1 Clearly describing: respective roles and responsibilities of Governing Body, Chair and individual members thereof and Principal; and requirements as to composition of Governing Body and inclusion therein of staff and students; (2) Replacing Chair of Governing Body as Chair Remuneration Committee and clarifying respective roles of Governing Body and Remuneration Committee; and (3) Requiring formal appraisal of Convener of Governing Body.*	**Insufficient clarity on roles** • *As we have both a rector and Vice-Chair it's unclear who is the 'Chair'... how Principle 7 is interpreted. In my view it's shared responsibility but this is not how [my institution] has interpreted it* • *I am aware from discussions that some were unclear whether those elected by alumni, such as General Council Assessors of whom I am one, were external and independent. In my view, we are, but the Code does not help to clarify that* • *'Autonomy' is less a feature than adherence to political or funding pressures* • *Happy with the Code for my current institution - less clear that it fits well with the structures of the 'ancients' - who have been very successful over the years*
Improved remuneration guidance • *The Code has given us a clearer path for dealing with the process of deciding the Principal's remuneration* • *There is greater transparency on remuneration of Principals and senior staff coupled with greater involvement in recruitment processes by staff and student for Principal and Chair of governing bodies* • *The Code is especially useful in guiding best practice when Court is addressing remuneration of the Principal, one of the trickiest issues of university governance from the point of view of public perception*	**Adherence to remuneration guidance** • *It's disappointing to note that all bar two Universities have not published the salaries of their senior executive team by salary band as required by the Code*
Increasing transparency • *We already worked to the principles but the Code made it more transparent* • *It has clarified the work of the Remuneration and Nominations Committees, neither of which should be shrouded in darkness* • *Adoption of Statement of Primary Responsibilities; greater transparency, through the website, of the institutions governance processes*	

Improvements as a result of the Code	Ways it has failed to serve its purpose
• *It gives clear guidance on the appointment of members including the Chair which has brought about significant improvements in my institution in the way that candidates are identified, evaluated and appointed* • *I am aware of the increased use of advertisement and transparent appointment processes for the recruitment of lay/external members of Court* • *The Code has led to a marked improvement in the way that Chairs and independent members of governing bodies are appointed. Public advertisement of vacancies on governing bodies has led to a wider pool of applicants, as well as being more open and transparent*	

Figure 11 Difficulty in compliance with the Code

Q8: Are there any aspects of the Code which you consider to be particularly difficult to comply with?					
Answer Options	Yes	No	Don't know	Not applicable	Response Count
For you as a governing body member	7	75	10	1	93
For your institution	10	66	13	3	92
Please provide reasons for your response.					26
				answered question	**94**

Figure 12 Good practice examples suggested

Good practice examples
Open recruitment of Court Vice-Convener; regular change in Remuneration Committee Chair, initiating annual effectiveness review of Court.
Governance is about knowledge and understanding. the Code is too prescriptive and does not cover sufficiently for example the need for a board to have the touch points that give independents reach back in to the institution. to much emphasis has been on structure and representation and too little on independents doing their duty and meeting their obligations.
At [my institution] I was extremely impressed by the inclusive nature of all meetings. All were clear and properly conducted, but informality and equality were dominant. The Chair of Court and the Principal attended all Committee Meetings when they could and answered questions from members of staff and students at all levels with great openness and no sense of superiority. The student representatives reported properly to the Court and their recommendations were discussed seriously.
Approx 50% male:female representation
My background is as a senior executive and non-executive in the private sector. I've been impressed with the extent to which my institution shares practices I'm already used to in my 'day job.' But it doesn't do this slavishly, it does it where it makes for good governance in a university.
Nominations and appointments to governing bodies - in particular Chairpersons - should be in the domain of the institution, and driven by their ambitions or economic conditions.

Good practice examples

No - we will quietly continue as we are in all institutions that I serve as it is invidious to shout about our successes and can be a boomerang.

[My institution] has a unique structure as a company limited by guarantee with shareholders. These shareholdings, representing the principal constituencies within the institution, provide a real means of holding the Board to account.

Induction of governors and the allocating of a mentor helps to give new members and understanding or their role and the expectation of them.

Annual away day to involve Court members in strategic planning

Diversity at Court. We now have female Principal, Rector, Senior Governor and Student Association President. Court Sub committee structure is clear and works well.

Induction of new members of our governing body includes reference to the Code. This has led to greatly improved understanding of the role of governing body members such as the requirement to support the best interests of the institution rather than the interests of a particular stakeholder group (including for example, particular groups of staff, members of a staff union or the student body).

Student representation on the Court, a good gender balance and more diverse make up of court members in general

Attendance of a student at Remuneration Committee meetings

Simpler and clearer nomenclature for lay members - 'Non Executive' member

Reporting of outcome of elections to Court (votes cast, turnout, whether contested)

Clear definition of criteria needed to stand / be appointed to 'lay' (i.e. independent) positions on Court

[T]here are a number of areas of good governance practice in [my institution] (in its transparency and the representative powers of its elected staff and student representatives) which could be adopted if other institutions were constituted as not-for-profit private companies with shareholders. But it is unique in that respect so we cannot practically offer them as examples of good practice for others.

Section 3: Any changes you would like to see to the Code

Figure 13 Need for changes to Scottish Code

Q10: The Code is organised into Main Principles and Supporting Guidelines and includes good practice examples. To what extent do you think each of these areas requires changes to be made?						
Answer Options	**Substantial changes**	**Moderate changes**	**Slight changes**	**No changes**	**Don't know**	**Response Count**
Main Principles	2	11	16	34	11	74
Supporting Guidelines	2	9	20	31	11	73
Good practice examples	6	17	14	22	14	73
Please expand on your responses.						37
					answered question	**74**

Figure 14 Changes as a result of legislation

Q11: Should the Code be changed to reflect any of the provisions in the Higher Education Governance (Scotland) Act passed by the Scottish Parliament in 2016 (or any other regulatory or legislative change made over the past three years)?		
Answer Options	**Response Percent**	**Response Count**
Yes	51.4%	36
No	24.3%	17
Don't know	24.3%	17
If so please state what changes would you like to see, and if not please provide reasons for your response.		40
	answered question	**70**
	skipped question	**47**

Appendix Three Public Consultation Results

The majority of the organisations which submitted a response to the consultation agreed to their responses being published, and these are available from the [Scottish Code website](). A brief description of the responses is provided below.

Figure 15 Summary of consultation responses

Organisation	Overview of response
Audit Scotland	• Detailed response suggesting range of specific technical changes to update and improve the Code's Main Principles and Supporting Guidelines • Draws in places on comparative practice on other sectors and highlights where the Code might usefully be amended accordingly
Educational Institute of Scotland (EIS)	• Broadly negative response about the effects of the current Code • Suggest ways of strengthening the Code, and ensuring it is line with the new legislation
Equality Challenge Unit	• Detailed response from the higher education sector's equality and diversity agency • Focusses on results of recent relevant research undertaken, including on the diversity of governing bodies pre-2013 and the introduction of the Code and more recently • Concludes that improvements apparent in gender diversity in the period, but more to do both on gender but particularly on the other protected characteristics in equality legislation
General Council of the University of Edinburgh	• Brief response broadly supporting the current Code, and suggesting that any revisions to it should not be unduly prescriptive for institutions
General Teaching Council for Scotland	• Generally supportive of the Code and the flexibility it offers for diverse institutions • Refers to good practice contained in governance codes in other sectors, and suggests number of specific changes required to the Code in light of recent legislation
Institute of Chartered Secretaries and Administrators (ICSA): The Governance Institute	• Response from UK's professional body for governance • Considers that review and revision of the Code is timely and appropriate given legislation, and suggests range of specific changes required in light of the 2016 Act • Also mentions shift in other sectors to the board's role in creating appropriate culture within an organisation 'setting the tone from the top' and that the Code could adopt a similar principle
NHS Education for Scotland	• Considers the Code broadly fit for purpose and reflect of good practice • Suggests greater focus in a revised version on the Scottish context, such as the Scottish Government's 'On Board' principles and commitment to gender parity on boards by 2020

Organisation	Overview of response
Royal Society of Edinburgh	• Overall considers that the Code has served its purpose and been beneficial • Proposes it should deal in detail with academic governance and establish lines of demarcation between governing bodies and academic bodies
Scottish Trade Union Congress (STUC)	• Considers that the Code was not developed with sufficient input from staff and students and therefor a low quality, weak document • Has had limited effect but some improvements, though not curbing pay awards for principals remains a key concern • Suggests a more robust document is required, reflecting the ethos and values of a university and their role in society and that it should reflect the provisions of the 2016 Act in full • Points to good practice in governance in the further education sector and NHS Scotland
Small and specialist institutions – **The Glasgow School of Art, The Royal Conservatoire of Scotland and Scotland's Rural University College**	• Joint submission from Scotland's small and specialist institutions emphasises their distinctiveness from the universities • Wants to ensure any revisions to the Code maintains reference to their special circumstances • Urges preservation of consistency in governance principles with recognition of institutional diversity
UNISON Scotland	• Calls on rejection of the Code and implementation instead of proposals made in the 2012 Governance Review, and that a future iteration should address principals' pay • Considers that the Code should be updated in line with the 2016 Act and should also set out purpose of universities and their role in society, and points to good practice in further education Code
University and College Union (UCU)	• Agrees with the concept of a national code, but that the current version does not go far enough or that institutions are following it fully, specifically regarding transparency • Suggests the Code should be updated in light of the 2016 Act and also ensure greater transparency, particularly around remuneration
University and College Union, Queen Margaret University Branch	• Considers the Code should be a stronger document, and has concerns about access to the Chair by trade union representatives and openness and transparency of the Court and its business • Suggests a range of specific changes required to the Code
University and College Union, University of Glasgow Branch	• Considers the Code has brought some benefits, but it should emphasis the benefits of universities to the economy and society • The Code should be updated in light of the 2016 Act and key issues are transparency, particularly executive pay, and the absence of staff and students on remuneration committees

Organisation	Overview of response
University of Aberdeen	• Supportive of the Code and provides an overview of changes made to the University's governance since its introduction • Suggests specific changes to the Code in light of the 2016 Act, but otherwise only that it could be strengthened on gender balance, and suggests that consideration of governance practice among key competitor countries could be helpful
University of Edinburgh	• Considers the Code served a useful purpose, but the University was already compliant in virtually all respects • Suggests the code should be shortened in light of the 2016 Act, and focus on a high level statement of governance principles only, and that the 'comply or explain' principle should remain
University of Glasgow General Council	• Brief response indicating the University already broadly compliant with the Code • Suggests the Code should reflect that, for the ancient universities, stakeholders include the General Councils (the graduates association referred to in the Governance Act) and the positive contribution they make
University of St Andrews	• Brief response emphasising the need for flexibility in how institutions meet the overarching principles of good governance • Suggests specific wording on the need for the Chair to maintain the confidence of the governing body and a good relationship with the executive
University of St Andrews Business Committee of the General Council	• Brief response indicating the University already broadly compliant with the Code • Suggests that the Code should require a minimum of two alumni on each governing body, elected by the institution's alumni association where one exists
University of Stirling Students' Union	• Considers the Code a positive and useful tool enabling appropriate consistency and flexibility and sharing of best practice to improve governance • Suggests the Code should be updated in line with the Act, but should go further and the review should provide a catalyst for this, particularly on promoting diversity and providing clearer guidance on roles of governing body members • Also makes specific recommendations on improving the format, layout and presentation of the Code

Organisation	Overview of response
University of Strathclyde	• States that the University was already broadly compliant but the Code provided an opportunity to review and implement best practice
	• Any changes it suggests should avoid increasing the regulatory burden on universities, maintain the comply or explain principle, not go beyond the 2016 Act and focus on main principles, with guidelines and good practice held online
	• Points to the Australian universities' voluntary code of governance as a best practice example