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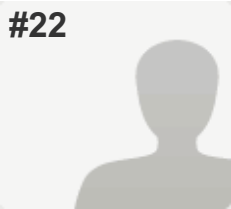**Collector:** Web Link 1 (Web Link)
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PAGE 3: Respondent information

Q1: Are you responding as an individual or an organisation?	Organisation
Q2: Please enter your full name or the organisation's name	Equality Challenge Unit

Q3: Contact details

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Q4: The Committee of Scottish Chairs would like your permission to publish your consultation response. Please indicate your publishing preference.NOTE - If you are responding on behalf of an organisation, anonymous publishing refers only to your name, not your organisation's name. If this option is selected, your organisation name will still be published. | Publish response with name

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PAGE 4: Review questions

Q5: How well has the Scottish Code of Good HE Governance served its purpose?

As the higher education sector's equality and diversity agency, Equality Challenge Unit (ECU) can comment on how well the Scottish Code of Good Higher Education Governance (the Code) has served an important aspect of its intended purpose; that of increasing the focus on equality and diversity in Scottish HE governance.

The Code sought to serve this purpose through three of its main principles:
= Main Principle 1 required the governing body to 'ensure that it observes good practice in regard to equality and diversity'.
= Main principle 2 required the governing body to 'ensure compliance with...appropriate legal obligations'.
= Main Principle 9 required governing bodies to establish goals and policies on the balance of their independent members in terms of equality and diversity, and regularly review their performance.

In 2014-15, ECU undertook research in Scotland to understand how governing bodies were meeting their legal requirements in relation to governance of equality and diversity, and to identify the challenges to increasing diversity of HE governing bodies, current practice in this area and examples of effective practice.
This research indicated that the Code has had considerable impact on prompting work to increase diversity of governing body membership in institutions, for many, initiating this work, and for others, providing an extra impetus.
'[ECU's research] shows how the implementation of the new Scottish Code of Good Higher Education Governance (the Code) has improved the gender diversity of independent members of governing bodies.'
David Ross, former chair of the Committee of Scottish Chairs

Some interviewees in the research were clear that the diversity of their governing body was being considered before the Code, but that the Code had provided helpful extra incentive to undertake activity. While others felt the Code requirements on diversity had created considerable impact.
'Our court last year genuinely responded very positively to the Code. In terms of its own diversity, I think that the whole issue has become much more to the fore in its thinking and in its discussions.'
Secretary

We will provide specific examples of work initiated in our answer to the following question, and further examples can be found in the final report of the above research (http://www.ecu.ac.uk/wp-content/uploads/2015/06/010_ECU_Governing-bodies-report_v6.pdf).

However, there was less evidence that the Code has had a significant impact on how governing bodies oversee their institutions' legal compliance and observe good practice in relation to governance of equality and diversity. Generally, the systems governing bodies had for this predated the Code.

Q6: 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.

Effect on the diversity of Scottish HE governance

1. Policies and goals
Our research confirmed that all Scottish HEIs met the Code requirement to establish a policy and goals on the diversity of their independent members. Thus the Code created strategic consideration of diversity across governing bodies, and prompted commitment to action. However, the research found that not all goals and policies were published on institutions' websites, some goals were more measurable than others and most related only to gender diversity. Therefore, the quality and transparency of this work varied. Notable examples encompassed the whole of the governing body membership, included numeric goals and extended beyond gender.

Example: Royal Conservatoire of Scotland Goal
'The board will also seek to achieve a blend of experience both from across Scotland, mindful of its national role, and further (outside) of Scotland, so as to maintain appropriate ethnic, national and international perspectives. Specifically, in terms of gender, the board will seek to achieve a minimum representation of 40 per cent for either gender among lay governors by July 2019.'

2. Positive action
The action being taken by governing bodies, in many cases in response to the Code, to increase the diversity of governing bodies can be described as positive action, which is entirely legal and seeks to alleviate disadvantage experienced by people who share a protected characteristic, reduce underrepresentation in relation to particular activities, or meet particular needs.

Example: University of Aberdeen
The university developed a statement of intent on court diversity, which sets out a goal to achieve a minimum of 25 per cent women on the court, with a view to achieve 40 per cent over time. The approach was unusual in that it

applied to the entire court membership, not just the independent membership as required by the Code. The court took this decision because:
= it felt it might empower the university to engage better with some of the electing and appointing bodies on the issue
= addressing only the eight independent members appointed by court might not significantly improve the overall gender balance on a board of 28 members

Activity undertaken:
The university had used public advertising for several years but with mixed responses in terms of the number and quality of applicants received. However, in a recent round of recruitment they took the following steps and had a better response.
= included a specific reference to seeking female candidates in their public advertisement
= used less paid advertising and conveyed more messages through their alumni community and through sharing the vacancy with staff
= shared the vacancy via Women on Boards' website, Public Appointments Scotland and a local chamber of commerce bulletin
= brought the vacancy to the attention of potential female candidates that they knew through alumni and professional networks

3. Positive impact on gender balance

At the time of our research in 2015, good progress had been made in relation to the gender balance of HE governing bodies, as reported by the Committee of Scottish Chairs in its report one year after implementation of the Code:
= 34% of governing body members were women
= five of the last six appointments to the role of chair had been women
= 43 of the last 53 appointments to independent member roles had been women

Earlier this year, Women Count 2016 revealed that yet further progress had been made on gender diversity, with 38% of governing body membership being women (up from 32% in 2013), 28% of chairs being women (up from 9% in 2013) and 30% of governing bodies being gender balanced (up from 11%). This brings the sector closer to meeting the CSC's goal of achieving a minimum of 40 per cent of each gender among independent members of Scottish HE governing bodies, with the remaining 20 per cent being made up of either gender.

This reflects the proactive approach that has been taken by institutions since the introduction of the Code and signals the ongoing commitment to increasing diversity of governing bodies that is shared by chairs and institutions. However, there is still some way to go until gender balance is reached across the sector and efforts will need to be continued.

4. Less impact on the participation of other groups
Several of our survey respondents and interviewees expressed concern that gender was being prioritised over other protected characteristic groups in board diversity discourse and wider equality initiatives.
'I do think there is a bit of a focus at the moment, sector-wide, on gender, and gender being in danger of becoming the only show in town.'
Secretary
One issue is a lack of equality monitoring information on governing body membership, meaning that only 'seen' characteristics could be known at present.
'In relation to the other protected characteristics we have not made any specific actions in relation to those. We don't have the information and it's not something that we've considered actively as a court.'
Chair

4.1 Race
We found that racial diversity of governing bodies was seen as either a particular challenge, or an issue that had not been given much attention to date. Only a minority of survey respondents said that they have members from minority ethnic backgrounds. Importantly, some interviewees saw a conflict between the racial diversity of their student body and the lack of racial diversity at governance level
'There is not much consideration given to sourcing people from different ethnic backgrounds.'
Survey respondent
'It has been difficult to get BME candidates to come forward.'
Survey respondent

4.2 Age
Age was another characteristic of concern. Interviewees emphasised the overrepresentation of older, retired people and underrepresentation of younger, employed people.
'If we come back to the age thing for a second – that's actually a personal bee in my bonnet, when I sit round the table. I'm 57, so I'm part of that old, coming up towards retirement type.'
Independent governor

independent governor.

Survey respondents believed that there is a lack of younger members because they are:
= more likely to be working, and might not be able to negotiate the time off work
= more likely to need remuneration to afford to give their time to being a governor
= may not be aware of the existence of the role of a governor on a university court
= may perceive that they do not have the experience to be a governor

4.3 Disability
Disability was rarely mentioned in our research. A minority of survey respondents mentioned having disabled members on their board.

5. Challenges to increasing diversity
Over 70 per cent of governors surveyed felt that there were still challenges to increasing the diversity of HEI governing bodies. These included:
= Limited applicant pool, particularly low applications from women
= Use of existing networks leading to 'appointing in own image'
= Low level of awareness of the opportunity to be a HE governor
= Limited influence over elections and appointments to the governing body
'There is a great focus by some of our members who are from a financial business background to almost look to appoint people in their own image and to not think more creatively about the third sector, charity or social enterprise in the same kind of way and to value people from those kinds of backgrounds in the same kind of way.'
Secretary

Effects on governance of equality and diversity
Our research found that institutions and governing bodies had numerous systems and mechanisms in place to enable the governing body to oversee legal compliance and good practice in equality and diversity. For example, effectively working through an equality committee, monitoring KPIs relating to equality, and scrutinising annual reports on equality and diversity.

However, it was the legal obligations of the Equality Act and the strong drivers to ensure equitable participation and achievement of students and staff to increase the success of the institution that were seen as the impetus for these arrangements.

Areas returning less examples of good practice included equality impact assessment at governing body level, which is a legal requirement. This would be a helpful future focus of attention, including in the Code, as it is a critical tool for ensuring equality and diversity are embedded in governing body decision making.

Q7: 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.

Diversity beyond gender
As outlined above, the code has been effective at supporting activity to increase participation in relation to gender. David Ross, former Chair of Scottish Chairs, said the Code has supported activity "demonstrating that improving gender diversity and securing the best candidates go hand in hand."

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

Positive Action
In setting out its most recent legislative agenda (for 2016/17) the Scottish Government has committed to bringing a bill requiring positive action by governing bodies to increase the diversity of members.

Some institutions have made reference to positive action in their policies and strategies:

'In undertaking any recruitment activity concerning the appointment of lay members of court, the court will have regard to equality and diversity characteristics of the court and will take positive actions to increase the likelihood of applications being submitted from applicants that would enhance the representative character of the court.'
Queen Margaret University

However, we found that there is some uncertainty amongst governing bodies about what positive action is and whether it is legal. Strengthening the wording and language in the Code in relation to positive action could play an important role in normalising positive action and mitigating any hesitancy in using these measures. This would lead to more discussion, commitment to, and use of positive action.

Improving diversity policies and goals
The Code could create greater consistency in practice in relation to diversity goals and policies by requiring that they be published and advising that goals should be measurable and specific.

Requiring equality impact assessment (EIA)
One of the Scottish specific duties of the Equality Act requires EIA of all new and revised policies, practices and strategic decisions. The governing body is ultimately responsible for ensuring this is undertaken by the institution. Additionally, governing body decision making should be impact assessed in a manner that is proportionate to the decision or strategy being considered. We found little evidence of effective systems of governing body oversight of EIA, or of the governing body itself undertaking EIA. Were the Code to include this, this could prompt greater focus on this important mechanism for ensuring equality and diversity are delivered.

Q8: 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?

See above comments regarding upcoming legislation on positive action. Additionally, through requiring diversity monitoring and data-informed activity covering the full range of protected characteristics, the Code could usefully help prepare governing bodies to meet the new requirements brought in by the 2016 amendments to the Scottish specific duties of the Equality Act. These require governing bodies to use the collected monitoring information on their membership in succession planning and publish their intentions in the use of this data, alongside their gender data, in their mainstreaming reports by April 2017.

Q9: Does anything need to change in the current Code to improve its clarity or presentation, even if not changing the substance?

Explicitly naming the other protected characteristics, as opposed to referring to equality and diversity or legislative commitments more broadly, would remove ambiguity regarding to the Code's ambitions in relation to the diversity of governing bodies and prompt more consideration of diversity beyond gender.

Q10: **Is there any good practice in higher education or other sectors, and from Scotland or elsewhere, which you would particularly highlight?**

ECU has recently worked with the Leadership Foundation for HE to produce an online equality toolkit for governors. Within this, we included several examples from HEIs throughout the UK: http://www.lfhe.ac.uk/en/governance-new/equality-and-diversity-toolkit/index.cfm

One example from this toolkit:
The University of Exeter operates a dual assurance model of governance with a lay lead working with a member of the Executive to deliver assurance to Council. Equality and diversity is one of the dual assurance partnerships which gives equality and diversity a prominence within the Executive and Council. This has been key in delivering equality objectives and is a very real demonstration of the commitment of the University.

Looking internationally, the University of Western Australia passed a range of resolutions over recent years in a concerted attempt to effect gender balance on its committees, which may be of relevance. More information can be found at: www.hr.uwa.edu.au/equity/committees

Q11: **Please provide any other relevant comments you may have.**

ECU's research generated a range of recommendations for governing bodies that will be relevant for the future development of the Code:

Policies, goals and data:
= Ensure policies and goals on governing body diversity are published to increase transparency.
= Ensure the goals they set to increase diversity of governing bodies are measurable.
= Consider developing goals that encompass the whole of the governing body membership.
= Introduce, or continue collection of equality monitoring information on both existing members and applicants to the governing body for all protected characteristics. They should provide the rationale for this activity and assurance of confidentiality to encourage disclosure.
= This data should be analysed at least annually to identify underrepresentation of any groups and/or progress on goals using benchmarking data, such as staff and student data or regional Scottish census data.
= Governing bodies could helpfully address diversity in governing body effectiveness review processes and include diversity in the governing body skills matrix.
Increasing diversity of governing bodies:
= Implement a raft of measures aimed at increasing the number of members from groups underrepresented on the governing body.
= Act to demystify the role and publicise the benefits of being a university governor, including the skills that can be developed.
= Work with employers to increase awareness of the professional development benefits of university board positions, secure their flexibility for their employees to serve as governors, and to publicise vacancies to their employees.
= In recruitment of new governors, governing bodies should be clear on the requirements for example, time commitments, number of meetings, compensation available.
= Re-evaluate advertisement wording and style to attract diversity. Consider broadening the skills and experience required to attract women and other underrepresented groups. In the person specification focus on relevant skills, underlying competencies and personal capabilities and not proven career experience.
= Advertise vacancies widely, and in targeted media, to reach underrepresented groups. Also use existing networks to publicise vacancies and source diverse candidates.
= Ensure transparent and unbiased selection processes for new members, for example, through selection panel training and ensuring gender-balanced selection panels.
= Communicate the governing body's commitment to increase its diversity to all electing constituents, including the senate, academic council and students' association, and request their support in achieving this. Work with these electing constituents to support them increase the diversity of their elections to the governing body.
= Communicate the governing body's commitment to increase its diversity to external constituents that appoint members to the governing body, such as local authorities.