

erOpen consultation: Review of the Scottish Code of Good Higher Education Governance

August 2016

Context

The Committee of Scottish Chairs (CSC) of Scottish higher education institutions is conducting an evidence-based Review of the [Scottish Code of Good Higher Education \(HE\) Governance](#) ('the Code'). Part of the evidence-gathering for the Review is this open consultation. CSC welcomes views from any individuals or organisations with an interest in higher education governance.

From its inception, the Code was intended to recognise and accommodate the continuous evolution of best practice, given that Scottish higher education operates in a challenging and rapidly developing global context. Consequently, CSC committed to reviewing the Code after three years. In addition, the intervening period has seen the [Higher Education Governance \(Scotland\) Act 2016](#) passed by the Scottish Parliament. This Review is therefore also considering to what extent and how the Code should accommodate changes to the governance of HEIs as a result of this new legislation.

Independent consultants from the [Leadership Foundation for Higher Education](#) are collecting and analysing the evidence for the Review, including from this public consultation, and will report to a [Code Review Steering Group](#) by December 2016. Thereafter the Steering Group will report back to CSC during 2017.

For further information about the Code and this Review, please see the Annex

to this consultation and the [Code website](#).

How to respond

Please complete these questions using the [online response form](#) before **1 October 2016**.

Alternatively, please email a response to the consultation, including your completed respondent information details, to helen.baird@lfhe.ac.uk or send a written response to the consultation by post to:

Helen Baird, Leadership Foundation for Higher Education, Peer House, 8-14 Verulam St, London WC1X 8LZ.

Respondent information

Are you responding as an individual or an organisation?

Individual	-
Organisation	✓

Please enter your full name or the organisation's name here

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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	✓
Publish response only (anonymous)	-
Do not publish response	-

We welcome your views on any or all of the questions below

Review questions

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

Scottish Higher Education comprises a wide range of diverse institutions with autonomous status. It is therefore essential to have a Code that takes account of that range of diversity, supporting universities and other higher education institutions to develop and refine governance systems in a way that is proportionate, while at the same time ensuring their accountability to give government and stakeholders confidence in them. The 'comply or explain' approach adopted by the Code supports flexibility in how universities and higher education institutions apply the principles of good governance set out in the Code and achieve its provisions.

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.

Given the changes to Scottish Higher Education legislation, it would seem timely and appropriate that the Code is reviewed and revised.

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.

The 2013 Scottish Code of Good HE Governance drew on the UK Corporate Governance Code as an excellent source of good practice and key elements of the UK Code were incorporated into it. The UK Corporate Governance Code was recently updated in April 2016; it includes greater emphasis on the key role of a board in establishing the culture, values and ethics of the organisation. The UK Code highlights the importance of the board setting the correct 'tone from the top'. The board must be seen to lead by example in ways that reinforce that tone and to ensure good standards of behaviour and values are embedded throughout the organisation. In reviewing the HE Code, there would be benefit in highlighting the importance of this aspect of the role of the governing body.

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?

Our response is based principally on the standards and principles of good governance rather than on the specific provisions of the Higher Education Governance legislation or other legislative or regulatory changes:

Principle 3 – Conduct of Members:

There would be merit in giving consideration to development of a standard code for members of the governing body of a university and other higher education institution (as in other sectors)

setting out the standards of conduct, behaviour and integrity expected of a member of such a body.

Principle 5 – Statement of Primary Responsibilities

It would be helpful if the Statement of Primary Responsibilities to be adopted by the governing body additionally included provisions for a document setting out clearly the roles of the Principal and the Chair as agreed by the governing body. This would help clarify the duties to be performed by each and where responsibility lies.

Principle 6 – Responsibilities of Members

There would be scope to provide greater guidance on managing conflicts of interest, along with the ongoing importance of collective responsibility and issues of confidentiality. (These are matters that could be aligned to a code of conduct for the governing body.)

Principle 7 – The Chair

The HE Code states that the '*chair shall be responsible for the leadership of the governing body, and be ultimately responsible for its effectiveness*'. The members of a governing body of a university or higher education institution are charity trustees and this statement does not appear to align well with charity law. The general duties of charity trustees (as set out in section 66 of the Charities and Trustee Investment (Scotland) Act 2005) do not apply distinctly or more significantly to a chair of trustees or to any other specific charity trustee on account of a particular office they may hold: rather, the charity trustees *collectively* and individually are responsible for the management of a charity, and ultimately therefore for its effectiveness.

Principle 10 – Governing Body Members

A board or governing body of 25 is now generally accepted to be too high to facilitate effective governance in a modern organisation. Good practice in other sectors generally recognises 12 as the maximum number for this purpose. While this may not be practicable in this context, there would be benefit in considering if a further reduction is feasible.

Principle 16 – Effectiveness

There is merit in considering a widening of the scope of the evaluation process to reflect good practice in other sectors. In other sectors, board evaluation is recommended annually, with externally facilitated evaluations every three years. This would include not only evaluation of the board collectively but also of individual board members and committees (and their members if different from the main governing body).

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

We have nothing to add in this regard.

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

We have highlighted aspects of good practice in other sectors in our response to question 5.

7 Please provide any other relevant comments you may have.

GTC Scotland appreciates the opportunity to comment on this consultation relating to our key partners in Scottish Higher Education in our collective endeavour to put in place systems of good governance to support and enhance the quality of teaching and learning for all learners at all stages of Scottish Education.

Thank you for responding to the Review

Annex

Development of the Scottish Code of Good Higher Education Governance

The creation of a Scottish Code of Good Higher Education Governance was a recommendation of the 2012 Report of the Review of Higher Education Governance, which was chaired by Professor Ferdinand von Prondzynski. Some further recommendations of this report were fulfilled in the content of the Code, while others were implemented, in modified form, through the Post-16 Education (Scotland) Act 2013 and the Higher Education Governance (Scotland) Act 2016.

By agreement with the Scottish Funding Council and the then Cabinet Secretary for Education and Lifelong Learning, Michael Russell MSP, the Committee of Scottish Chairs (CSC) was given responsibility for the production of the Code. To achieve this, the CSC established a Steering Committee, chaired by Lord Smith of Kelvin, which in turn commissioned expert consultants to collect evidence that would inform the content of the Code. A draft Code was published for open consultation in April 2013 and the Code in its final form was published in July 2013 and came into force on 1 August 2013.

The Code was adopted by the Scottish Funding Council (SFC) as constituting the principles of good practice in governance with which institutions are required to comply in the terms of the Post-16 Education (Scotland) Act 2013. This means that compliance with the Code has become a condition on the payment of HEIs' primary public funding.

The Current Code

The Code consists of 18 Main Principles and supporting guidelines for each. In addition, the document includes some examples of good practice from around the Scottish higher education sector and provides, in an annex, detailed guidance on whistleblowing (which is reproduced from other sources).

The Code operates according to the commonly employed approach of 'comply or explain'. This is outlined in Part 1 of the Code as follows:

'The Code is not a prescriptive set of rules, but rather a set of Main Principles supported by Guidelines and examples of Good Practice which should be added to over coming years. It is expected that all Institutions will comply with the Main Principles and observe the provisions set out in the supporting Guidelines. The examples of Good Practice are offered to guide Institutions in setting out to meet these provisions. The Scottish Funding Council will require Institutions to follow the Code as a condition of a grant of public funding. Given the diversity of Scottish Higher Education Institutions it is possible that certain of the Main Principles can be met by means different to those envisaged in the Guidelines. Accordingly the Code is issued on a "comply or explain" basis. This approach is widely accepted as the most suitable means of achieving good governance in an effective and transparent way.'

The Review Process

From its inception, the Scottish Code of Good Higher Education Governance was intended to recognise and accommodate the continuous evolution of best practice, given that Scottish Higher Education operates in a challenging and rapidly developing global context. The Committee of Scottish Chairs (CSC) committed to reviewing the Code after three years.

In addition, the intervening period has seen the [Higher Education Governance \(Scotland\) Act 2016](#) passed by the Scottish Parliament. The review of the Code is therefore also considering to what extent and how the Code should accommodate changes to the governance of HEIs that this new legislation has brought about.

To carry out this review, the CSC has commissioned a [Code Review Steering Group](#), which includes both independent members and representatives of key stakeholder groups, who collectively bring a wide range of experience from governance roles in HE and other sectors.

This public consultation forms one part of this evidence-based review process. In addition, evidence is being gathered through:

- A series of stakeholder meetings at every Scottish Higher Education Institution (HEI) which are taking place between July and October 2016; and
- A survey of all serving and recent members of those HEIs' governing bodies (during September 2016).

The evidence-gathering work will be carried out during the period June to October 2016 by independent expert consultants from the [Leadership Foundation for Higher Education](#), who will report to the Steering Group.

Consultation Outcomes

The consultants will complete the evidence gathering by the end of November 2016 and present the findings to the Code Review Steering Group. Thereafter the Steering Group will report back to CSC during 2017.
