

REVIEWING THE SCOTTISH CODE OF GOOD HE GOVERNANCE

Summary

The Royal Society of Edinburgh (RSE) believes that, overall, the Scottish Code of Good Higher Education Governance (the Code) has served its purpose well and is now firmly implemented across the Sector.

The Code has increased transparency of process, diversity on governing bodies and standardising of good practice. However, we believe that individual HEIs could do more to publicise the improvements in their governance to the general public.

We believe that the current Code could be improved by dealing in detail with the academic governance of institutions. It would also be helpful for the Code to seek to establish some general principles concerning the roles and responsibilities and lines of demarcation between the governing body and academic body.

The revised Code will need to be adapted so that its provisions do not conflict with those of the Higher Education Governance (Scotland) Act 2016 (the Act).

Background

The RSE welcomes the opportunity to make a submission to the Steering Group which has been appointed by the Committee of Scottish University Chairs to conduct the 2016 review of the Scottish Code of Higher Education Governance.

The RSE has previously submitted to the 2012 Review of Higher Education Governance, and the initial creation of the Code in 2013.

We would be pleased to discuss further any of the comments made in our response with the Steering Group and its external consultants.

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

The von Prondzynski Report of the Review of Higher Education Governance in Scotland gave four objectives of university governance:

- “...effective stewardship of the university to secure its sustainability over the medium and long term;
- safeguarding the mission of the university and the services it provides for the public benefit;
- securing the proper and effective use of public and other funds; and
- ensuring stakeholder participation and accounting to the wider society for institutional performance.”¹

The Scottish Code of good HE Governance (the Code) aimed to encourage progress in university transparency, inclusion and accountability to stakeholders. It was building on what was already recognised as a solid basis of university governance.

The RSE believes that, overall, the Code has served its purpose well and is now firmly implemented across the Sector. The Code was prepared on the basis of principles supported by guidelines and good practice, rather than a prescriptive set of rules. This created a strong sense of collective ownership of governance matters by governing bodies and their Chairs. This in turn resulted in a high level of commitment to, and compliance with, the Code. Governing Bodies are able to apply the principles to their differing strategic missions, constitutions and culture. Specifically, the ‘comply or explain’ principle is welcome as it recognises and acknowledges the diversity in scale and nature of Scotland’s Higher Education Institutions (HEIs) and enables governing bodies to explain to the Scottish Funding Council in the event that specific elements of guidance may not be relevant or proportionate for the circumstances of their institution. This principle also recognises that good governance is constantly evolving and that individual institutions may have developed innovative ways of improving both accountability and transparency. We believe that this feature of the Code supports the autonomous and diverse nature of universities.

¹ <http://www.gov.scot/resource/0038/00386780.pdf>

We would note that, if it was an objective of the Code to extend public and political confidence in the standard of governance in Scottish HEIs, this may not have been fully achieved; two of the sector's most important stakeholders, trade unions and student representatives at a national level, did not feel that their interests were directly represented among the Code's authors. The RSE notes that the 2016 Review Steering Group has both trade union and student representation, and welcomes this.

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.

Other respondents are better placed to cite examples relating to individual institutions. The RSE notes, however, that the Code has led to significant improvements across the sector in a range of areas of which we single out the following.

Any improvements it has brought

The process for recruiting chairs and independent members of the governing body is now much more transparent. Selections on the basis of skill matrices following open advertisement are now the norm. This was not invariably the case in the past.

There is an improved gender balance on governing bodies. HEIs have established and embedded their own principles on gender equality and inclusion into their policies, strategies and the membership of committees. They have done this appropriately for their own circumstance, within the framework of the Code. Progress is being made, as evidenced by the number of awards attained across the sector under the Athena SWAN programme, and by the increasing numbers of female principals, vice-principals and chairs of governing bodies. The collective commitment to the attainment of gender balance among independent members of the governing bodies is particularly notable. It is important that other dimensions of diversity continue to be promoted.

The guidelines on remuneration have greatly improved transparency in the arrangements for senior salary decisions, including those affecting Principals. It has resulted in much clearer accountability of remuneration committees to their governing bodies.

The Code has also resulted in the standardising of good practice for staff and student involvement in Principal and chair recruitment. As these are vital positions, a proper and inclusive recruitment process is important.

Ways in which it has failed to serve its purpose

We believe that individual HEIs could do more to publicise the improvements in their governance to the general public. For example, some governing bodies have already conducted external evaluations of their effectiveness but we have not found it easy to locate the results of these reviews on institutional websites. We would stress the importance for governing bodies to realise that there are external as well as internal audiences for information about their governance.

Consideration could be given to Open Doors days inviting local stakeholders to visit HEIs. This would provide the opportunity to hear at first hand from Governing Bodies of the activities of the HEI and its impact within its local community.

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 current Code does not deal in any detail with the academic governance of institutions. It is a unique feature of higher education institutions that each has a Senate (or academic board or council) which, under the leadership of the Principal (as the senior academic), has responsibility for academic matters such as research, teaching, academic standards and conduct. In the run-up to the 2016 Act, a proposal to make academic matters the sole prerogative of the Senate was withdrawn. In our view this was a correct judgment as the governing body are the charity trustees of the HEI. They must, therefore, be the final arbiter of any issue affecting the core purpose, success and reputation of the institution. Moreover, strategic academic issues such as the sustainability of a particular discipline or service raise choices about resources that must concern a governing body. This said, we believe that it can be difficult for governing bodies to strike the right balance in their oversight of academic boards, with risks of either too much or too little oversight.

The relationship between the governing body and academic board is not always clearly understood by either body. 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, while recognising that individual institutions will need to tailor their detailed arrangements to their own traditions and scale of organisation. Suggested Guidelines might be:

- Confirmation that the governing body is ultimately the sovereign decision making body.
- However, in order to fulfil that function, it would be good governance practice to have members' representation of the Academic Board/Senate on the governing body (as already exists in some institutions). It is important that members of the Governing Body have the necessary skills and experience to understand the requirements of the various stakeholders in the university. Members, for example, might be encouraged to attend Senate/Academic Board meetings as observers.
- It is highly desirable that the Academic Board/Senate and governing body are clear about each other's responsibilities and are well acquainted with each other's functions and responsibilities. Each institution should publish [online] guidelines on how academic governance is discharged; and familiarity with this should be part of governors' induction.
- An introduction to the functions of both the Academic Board/Senate and the governing body should also be a key part of induction. It is important that provision is made for induction, training and further professional development in order to maximise the input which members are able to make to the governing body, and to help ensure it operates as effectively as possible.
- The governing body needs to ensure that among the staff members, some should be drawn from academic board, to maintain links between the two bodies.
- Development of an integrated assurance model would contribute to this model.

- An annual meeting of the Academic Board/Senate and the governing body could review performance of respective responsibilities and discussion of strategic academic matters.

Secondly, the RSE believes that the updated Code could outline how governors from staff and student constituencies can be encouraged to play a full role as governors of their institution. We strongly endorse the principle in the existing Code, which reflects the legal requirement of all charity trustees, that 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. 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.

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?

The revised Code will need to be adapted so that its provisions do not conflict with those of the Higher Education Governance (Scotland) Act 2016 (the Act). The current Code provides excellent guidance for the appointment of a chair of the governing body, in circumstances where the Chair was to be chosen by the governing body. This now needs to be adapted to cater for the Act's requirement that there be an election of a Chair (senior lay governor) by the staff and student body, from a short list produced under the aegis of the governing body.

The revised Code needs to affirm, as does the current Code, the crucial role that the Chair will play in ensuring the success and sustainability of the institution; and it needs to stress that the task of selecting a short list of candidates, all of whom are fit to be submitted to the staff and student electorate, is an onerous one which must be undertaken rigorously – indeed it is one of the two most important tasks (along with recruiting a Principal) that governing body members will undertake over their period of office. This is emphatically a different matter from the traditional election of a Rector in an ancient university. The Act implicitly recognises this in providing that short listed candidates must meet criteria established by the institutions duly established selection committee to demonstrate that each can:

- a. *Exercise the functions of the senior lay member*
- b. *Command the trust and respect of- (i) the other members of the governing body, (ii) the academic board of the institution (iii) the staff and students of the institution.* ²

The revised Code should also reaffirm the need to ensure the right range and balance of skills make up the governing body. This will help the Governing bodies to achieve their objectives. Financial skills are particularly relevant, given the sustainability challenges that institutions are facing. The governing body needs to be able to challenge and support the thinking of the executive team in this area.

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

The RSE believes that the current Code is well written, and overall has a sound structure.

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

We expect other responses, particularly those from the higher education institutions themselves, will be able to highlight good practice pertaining to the individual institutions. The RSE, however, would like to highlight the research conducted by the Equality Challenge Unit into equality and diversity in Scottish Higher Education Institutions.³

Please provide any other relevant comments you may have.

HEIs need to prepare for future challenges. This includes technological and financial issues. The income from international students is also uncertain, following the decision to leave the European Union. These challenges make it imperative that each institution has a high quality Principal and Chair, and strong governance in place.

The RSE believes that four meetings of the governing body in a year could lead to a limited sense of engagement amongst boards. In addition, we believe that a minimum of four is not enough for such complex institutions in such challenging times. The timing of these meetings should also be considered, to maximise attendance. Increasing the minimum number of meetings would give sufficient time for governing body to deal with complex issues, such as planning for the future. Strategic foresight and mitigation are important.

It is important that Scotland's HEIs have the ability to adapt to a constantly evolving environment. Their continued success in the highly competitive global context depends upon maintaining the flexibility to respond to opportunity and need in the most appropriate manner for each individual institution.

² http://www.legislation.gov.uk/asp/2016/15/pdfs/asp_20160015_en.pdf

³ <http://www.ecu.ac.uk/publications/governing-bodies-equality-and-diversity-in-scottish-higher-education-institutions/>