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Ms H Baird
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Via email

Dear Ms Baird,

Review of the Scottish Code of Good Higher Education Governance

On behalf of ICSA: The Governance Institute I am pleased to provide feedback on the review of the above code of governance.

ICSA: The Governance Institute is the professional body for governance. We have members in all sectors and are required by our Royal Charter to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance.

We are the professional body qualifying and supporting Chartered Secretaries, corporate governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, company law, administration and governance, which enables them to add value to any organisation.

ICSA has an extensive pedigree in the governance arena, advising governments and regulators on company law, charity law and corporate governance. The breadth and experience of our membership enables ICSA to access a variety of applied experience in order to provide pragmatic insights into effective practices across a range of organisations. Our members' wealth of expertise and experience of charities, and their detailed understanding of charity and company legislation and regulation, has informed our submission.

Specific questions

Q1.   How well has the Scottish Code of HE Governance served its purpose?

Codes of good governance are now prevalent in many sectors of the UK economy where good governance is essential to organisational success and the delivery of stated goals. Stakeholders, and board members, can use such codes to help understand the minimum standards by which an organisation should be directed and controlled. In general, the principles applied across those sectors have coalesced around an agreed core, with minor changes to reflect the language and specific legal duties in some types of organisations.

As society changes, and the general public's views of organisations evolve, it is only natural that governance codes should be reviewed to reflect, if not run in advance of, stakeholders' expectations and the way modern organisations are run. Given the changes to Scottish HE legislation, it is timely and appropriate that the code is reviewed and revised.

Q2.   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.

As stated above, a governance code for Scottish HE institutions has clearly articulated the governance standards by which such organisations should be run, and detailed how the people leading them should be appointed to, and behave in, office.

Q3.   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.

Within other sectors there has been a significant shift to include the board's role in creating the appropriate culture within an organisation. It is generally accepted that an organisation's culture is set by the board, often described as 'setting the tone from the top'. In doing so, the board must be seen to behave in ways that reinforce that tone, and embeds those behaviours and values throughout the organisation. Perhaps the HE code would benefit from adopting a similar principle in the revised version?

Q4.   Should the code be changed to reflect the Higher Education Governance (Scotland) Act passed by the Scottish Parliament in 2016, or any other legislation or regulatory changes made since 2013? If so, what changes would you like to see?

Emphatically yes. The HE Governance (Scotland) Act reinforces many of the principles articulated in the code. It does however, codify some existing practices and reinforces others.

In particular changes will need to be made to:
- Principle 1 - with regards to the specific duties of the senior lay member and enhanced awareness of the conflicts of interests that are inherent within the governing body. Unless these issues are dealt with in greater detail in another revised principle. If so, there should be appropriate cross-referencing.

- Principle 2 – reference might need to be made to the need to regularly review and revise bye-laws in relation to the composition and operation of the academic board.
- Principle 3 – to include greater and updated guidance on the recognition, management and reporting of conflicts of interests and conflicts of loyalties. Unless these matters are dealt with more comprehensively in another revised principle.
- Principle 4 – given the codified composition of the governing body to include staff, union representatives and students there may be an argument to call for the strengthening of this principle, especially around the operation of 'reserved business'. Policies and procedures that explain how such matters are dealt with should be in place and made publicly available. Such documents should be regularly reviewed and revised, as standard.
- Principle 5 – to include a specific statement that there should be a clear, written document agreed by the board that details the roles of the senior lay member and the principal. This will help to clarify what duties should be performed by each, and where responsibility lies. Again this should be regularly reviewed and revised.
- Principle 6 – as mentioned previously, 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?
- Principle 7 – this principle will benefit from being revised to more accurately reflect the legal duties of the senior lay member, and the relationship with the rector, as detailed in the Act.
- Principle 9 – as stated above, cross reference to any revisions dealing with governing body members' conflicts of loyalty.
- Principle 10 – 25 members on a board is far too high to create effective governance in a modern organisation. While there is a statutory requirement placing seven people round the governing body table, a balanced board with a majority of independent members can still be achieved with significantly fewer than 25 people. Good practice in other sectors generally recognises 12 as the upper limit. Although this may not be possible in this instance, a reduction is still feasible and recommended.
- Principle 11 – should be updated to reflect the legislation, especially with regard to remuneration.
- Principle 16 – in other sector codes, board evaluation is recommended annually, with externally facilitated evaluations every three years. Board evaluations explicitly cover a combination of the board collectively, individual board members and committees (and their members if different from the main governing body). This principle could therefore be strengthened by reflecting good practice in other sectors.

Q5. Does anything need to change in the current Code to improve its clarity or presentation, even if not changing the substance?

Nothing further to add to the comments above.

Q6. Is there any good practice, in higher education or other sectors and from Scotland or elsewhere, which you would particularly highlight?

Previous responses have referred to good practice in other sectors. The importance of a governance professional supporting the main decision-making body should not be underestimated when highlighting good governance practice.

Q7.   Please provide any other relevant comments you may have.
Nothing that has not been previously stated in response to the questions raised in the consultation document.

I trust the above comments add to the development of the final revision of the code. Should you require any clarification or have questions, please do not hesitate to contact me directly.

Yours sincerely,