

### Respondent information

University of Stirling Students' Union

Publish response with name

X

Publish response only (anonymous)

**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?

The Code has always been seen by Institutions as a positive and useful tool for good governance. During the Higher Education Governance (Scotland) Bill consultation stages, most Institutions, including Stirling, cited the Code as having a positive impact of Governance across the Sector. The Code affords a certain degree of consistency across Institutions, whilst allowing for Institutions to maintain a level of autonomy. The 'comply or explain' model has its benefits (Institutions still retain autonomy and a sense of flexibility regarding the guidance) but due to the nature of accessing Scottish Funding Council grants, which required Institutions to align with the Code, support and use of the Code, has always been embraced.

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.

A positive impact of the Code is the sharing of best practice that the Code ensures; it is vital that Institutions see examples of how they can improve their own governance, and the Code offers an opportunity for this. This could be even further expanded to ensure that there is a best practice exemplified aligned with every main principal.

The Code has had a positive impact on ensuring effective representation of all stakeholders to a certain degree, and work with the ECU has went some way to improving the diversity of Boards; however, they are nowhere near as diverse as they should, or could, be and further work is needed here. (see below)

The 'comply or explain' model, despite some benefits, also means there are no statutory requirements for Institutions, and as such no real way to actively challenging those institutions who fail to align their governance arrangements – and that where there is failure to comply, appropriate sanctions are enforced.

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.

There is an opportunity now to go beyond the legislative changes that the Act brings, and further seek to showcase good practice in governance, whilst respecting the autonomy and diversity of institutions.

Main Principal – Number 9 of the Code states: *The governing body, having due regard to applicable law, shall establish appropriate goals and policies in regard to the balance of its independent members in terms of equality and diversity, and regularly review its performance against those established goals and policies.*

We believe there is the opportunity for the Code to go further to ensure more diverse Board compositions in the Sector. The introduction of a *requirement* for Institutions to annually monitor and evaluate the equality, diversity and inclusivity of their governing bodies and academic boards would be a welcome addition.

Whilst we would not support the introduction of quotas on the basis of protected characteristics, we would like institutions to consider and reflect upon the extent to which their governance arrangements are fair, equitable and collate input from a wide and diverse range of backgrounds. Institutions should be consciousness and reflective of the E,D&I of their Board and devise realistic action plans on how to ensure their Board is as representative as it can be. There also needs to be more accountability and transparency, so as to prevent Boards continuing to be the same faces (white, middle-aged, male), which rarely reflects the composition of the Institution that they govern. The ECU's recommendations from their report are all sound guidance in ensuring a more diverse, representative governing body and these should be taken into consideration as part of the annual review.

We also believe that the Code could provide clearer distinction between the role of the principal and senior lay member within an institution, in terms of their role, responsibilities and

duties, as well as making specific note of the accountability of lay and senior lay members of the governing body to all stakeholders of the institutions. These inclusions would provide clarity, which would ensure a more effective, transparent and accountable Board, as well as better guidance and expectations for potential and current lay members.

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?

In order to bring the Code into line with current legislation, there is a need to:

- Quantify the breakdown of required minimum membership of governing bodies and academic boards
- Provide guidance on the appointment/nomination/election process for members of the governing body and academic board – including recruitment and selection procedures
- Advise on the appropriate procedure for dealing with the resignation or removal of a member of a governing body or academic board
- Provide specific guidance on the remunerations available to the senior lay member, taking into account the workload associated with the role.
- Make specific reference to the work of academic boards and clarify the nature of their relationship to the governing body.

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

Looking beyond the actual content of the code, there is a need to consider the suitability of the current codes format, layout and presentation. Whilst the current code aims to succinctly present its guidance for good governance, the structure is largely muddled – lacking coherence and readability. The nature of mandatory principles but optional guidance also creates difficulty for the user in determining which aspects HEIs should be adhering to and those which they have the option to.

In creating the new code, we'd like to see:

1. A clear and concise structure, including a revised grouping system, which allows for topics of a similar nature to be presented in a natural, sequential and logical order.
2. A refreshed colour scheme which shows consideration towards accessibility and readability. (The current green colour is not easily readable)
3. A reconceptualised layout, which clearly presents the principles of good governance, with links to appropriate examples of good/best practice in that area.

In addition to these considerations, there is arguably a need to develop a more easily marketable presence for the code – which will allow it to be widely disseminated around the sector. Too often the sole approach taken to presentation of best practice is in the form of a large, cumbersome report. Supporting a formalised guidance document with an additional medium that is more fluid and easily accessed should support better knowledge and understanding of the code and its relevance to institutions and the HE Sector in Scotland

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

*Governance and quality guidelines in Higher Education – OECD*

7 Please provide any other relevant comments you may have.

Although the Code has went some way to ensuring ‘good governance’ in the Scottish HE Sector since introduced in 2013, there is scope to go further, and this review should serve as the catalyst for this. Governance of our Institutions should be transparent, accountable and representative of the staff and students they govern. Governing bodies should serve in the best interest of the Institution and its members, and it is key that staff and students see the Governing body doing this in a clear way. The Code has the opportunity to take on board the legislative changes from the Governance Act, but also to take other necessary steps to ensure that we are seen as Sector leading when it comes to good governance in Higher Education.

**Thank you for responding to the Review**

## 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.