

## Introduction

The Abertay University Court's comments on the draft revised Code presented by the Steering Group, revised following the process of stakeholder engagement, are given below.

At a general level the Court welcomes the re-organisation of the document into the 7 themes, which now have a more logical and sequential order; and supports the intention to provide for examples of good practice in a separate repository, since this provides scope to describe a range of practices.

## Format

The repetition of the main principles in bold and then again in italics appears to be unnecessary duplication and we consider that the main principles could be provided as a single set at the outset (as in the current Code). The repeated principles could then be numbered and the more detailed provisions that appear below them could be presented as a sub-set and numbered thus (see the style of the UK CUC Code).

## Content

The main observation in terms of content is about tone, which comes across as unnecessarily hectoring and runs the risk of appearing to new and prospective governors as unwelcome and negative.

There is significantly more **required** practice, making the Code appear more like a set of Government regulations that neither provide for the flexibility required by very different higher education institutions, nor recognise the considerable experience and expertise which governors, many with significant achievements in their careers, bring voluntarily to the governance of the sector. Taking the key words 'must' and 'should' and comparing the current Code with the draft revised Code (and excluding the duplication of the main principles), the following shift is noted:

	<b>Current Code</b>	<b>Draft revised Code</b>
'Must' references	25	171
'Should' references	129	67
<b>Total of 'must' and 'should'</b>	<b>154</b>	<b>238</b>

This has significant implications for – and is only barely consistent with - the '*comply or explain*' principles on which the Code is based and suggests that there is potential for significant work to 'map' the University's practices against the 238 items in the new Code in order to demonstrate compliance.

We have the following, more specific, points or observations:

1. the definition of '*student member*' in page 3 should not have the word '*sabbatical*' as it may be unnecessary (and, on a narrow reading, might be thought to exclude officers of student associations who are actually graduates of the institution, rather than student on sabbatical leave);

2. as regards the reference to ethical policies in paragraph 9 we note that ethics are subjective, moral codes that may have little meaning in specific '*comply or explain*' terms. When applied to the full range of an institution's policies and actions, assessing the ethics (or not) is subjective and may, in some cases, be a moral / political judgement by someone that is not shared within the institution. We regard this as a philosophical ambiguity that is clearly not intended but is opened up by its inclusion;
3. the new requirement (see paragraph 10) to meet the principles of fair work is noted, but we suggest that the reference to the '*Fair Work Framework*' initiative of the Scottish Government is removed and moved to the proposed good practice repository, as it could change in future, if the government of the day so decides. Alternative definitions of 'fair work' may develop over time or already exist elsewhere and removal of the reference would future-proof the Code;
4. paragraph 18 is extraneous since the size and composition will, for Abertay at least, be defined by our governing order and any decision to increase or decrease the size would require approval by the Privy Council. This should be removed;
5. the main principles in italics between paragraphs 26 and 27 might better refer to '*Principal and other members of senior management*' thus including, for example, Vice-Principals who are also governors *ex officio*;
6. the new requirement (see paragraph 31) for governing body members to register gifts and hospitality requires clarification: we assume that it means any that relate or could be perceived to relate to their association with the institution - otherwise this might be interpreted as covering every aspect of that member's life, which would be unacceptable;
7. we already have a legal duty in relation to equality and therefore do not see the need to include it in KPIs (para 34). The wording could be adjusted to focus on the higher level principle of the governing body monitoring whether the institution is meeting that duty. This would also allow the governing body to determine its own KPIs (noting that these can change over time and be supported by underlying PIs, which could include those mentioned, for example).
8. paragraph 39, in respect of external organisations or electorates being required to consider how *they* can contribute to increasing the diversity of the governing body, would be unenforceable by the University and should therefore be removed or amended/re-phrased (albeit that the intention here is valid);
9. we are not aware of any evidence that a public meeting with stakeholders (paragraph 47) will lead to any meaningful improvement in the quality of stakeholder engagement and there is anecdotal evidence from practice in England, where such arrangements are common, that suggests the opposite;
10. as regards paragraph 55, it would be a matter for the students' association to ensure continuity between student members on the governing body;
11. paragraph 68 is a statement of fact and the first sentence repeats what is said earlier in the document.

We recognise the work undertaken by the Steering Group, and the difficult task it at times faced, but as the above comments make clear we do have reservations about the current draft.