

Audit Scotland response to consultation on the Scottish Code of (Higher Education) Good Governance, June 2017

Comments

Initial Audit Scotland comment	Further comments
<p>Whilst recognising that the guidance is designed to be flexible in its operation to reflect the different scale and nature of institutions that constitute the HE sector, we would question whether setting a minimum of four meetings a year for the governing body is sufficient to enable it discharge the wide range of responsibilities placed upon it, even if the University has a well developed committee structure supporting it in its work. It will therefore be interesting to see whether this view is reflected in the feedback that you receive from the sector in relation to its experience of implementing the code.</p>	<p>The code has retained a suggested minimum of four meetings per year. We believe that you should consider having the code set a higher expectation, for the reasons set out on the left.</p>
<p>Based on our recent audit experience at the former Coatbridge College, we believe that the chair of the governing body should not chair the remuneration committee. This position was reflected in the March 2016 Education Secretary Task Force report on Good Governance in Colleges. The more detailed supporting guidance within the Code recommends that the chair of the remuneration committee should be drawn from one of the independent members of the committee. It would be helpful if this point were included within Main Principle 15.</p>	<p>The code states that the membership of the remuneration committee should include the Chair of the governing body, but that the committee chair should be a lay member. We note that the code deliberately uses the words 'should' and 'must' at different points. In this particular instance, we suggest that 'should' be changed to 'must'.</p>
<p>The code talks about 'reserved' matters that will not be open to discussion by the whole governing body. This is an unusual approach to governance. The code does not give specific examples (other than in general terms, i.e. matters relating to individual members of staff or commercially sensitive material) of what might fall into this category,</p>	<p>While the detail in the code advises that such business should be rare and kept to a minimum, it still does not include specific examples of the types of business that might fall into this category. We think that the code should include specific examples, to help governing bodies to determine when consideration by a more limited group of the</p>

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<p>nor does it clarify who decides which matters are 'reserved'. As a point of principle we do not think that any significant issues affecting the HEI (including commercial or staff-related matters) should not be considered by the governing body as this would compromise the effectiveness of the governing body in exercising its corporate oversight role.</p>	<p>governing body might be appropriate.</p>
<p>This section (page 13) gives examples of significant decisions taken under delegated powers which should always be reported back to the governing body. We suggest that significant or unusual severance payments to staff should be included in this section.</p>	<p>There is no reference in the code to significant or unusual severance payments to staff. We think that public interest in such payments would justify this being considered further. The types of payments that might fall into these categories include where a severance payment exceeds the terms of a previously agreed scheme, or where a member of staff receives payment in-lieu of notice (or is placed on 'garden leave').</p>

Observations

1. The code does not appear to work from a principles-based approach, instead adopting a 'comply or explain' approach. However, in many instances, the code uses the word 'must', where it may be more appropriate to offer flexibility i.e. by using 'should'.
2. The only other point on which we would invite you to reflect is the use of the word 'ensure' in relation to certain requirements and actions of individuals and groups. It appears to us that, in many instances, the requirement will not be achievable because the extent of control exercised by individuals or groups is not sufficient to prevent the alternatives from occurring. For example, the code places a responsibility on the secretary 'to ensure compliance with all procedures'. This might be better phrased as 'to provide support that enables the governing body to comply with all procedures'. This suggested amendment could apply at various points throughout the code.

Conclusion

3. In conclusion, and subject to further consideration of the comments, above, we welcome the changes made to the draft and believe the current draft provides a strong basis for supporting effective governance in higher education institutions