



Response to Review of Scottish Code of Good HE Governance Advice Paper AP 17-10 June 2017

Introduction

The revised Code is shorter and in general well drafted, and retains the substance of the current Code. We welcome the continued distinction between broad principles and detailed guidance and retention of the 'comply and explain' principle: these features importantly recognise the autonomy of our HE institutions and the diversity of their missions.

We are pleased to see points we made in our advice note (AP16-22) reflected in the revised code, e.g., on academic governance (paras 91-93); and on the encouragement of a full contribution from all categories of governors (e.g. para 27).

We also warmly welcome the revised Code's increased emphasis on equality and diversity (Principle 4 and paras 32-40).

Against this background we comment below on the detail of the revised Code. There are 4 key points that we wish to highlight.

1. The balance between 'must' and 'should' merits review. The section on, 'Form of this Code' (page 2) helpfully defines its use of the two modal verbs according to the strength of the expectation of universal compliance. But the text uses 'must' so often that it reads like a rule book, rather than a Code to be applied relevantly and proportionately by governing bodies of autonomous institutions. We highlight some examples later.
2. The very welcome section on equality and diversity is strong on gender but could be streamlined and then strengthened to give more emphasis to other aspects of diversity. There is also a positive role for diversity as a means to institutional goals and not simply as an exercise in compliance. This may go beyond protected characteristics. For example international representation on governing bodies is surprisingly rare, given the international reach of Scottish HE. In terms of structure, while it is helpful to bring all the equality and diversity material together in one section, it would be good if they were also referred to briefly in the sections dealing with primary responsibilities, KPIs, induction, etc.
3. We welcome the section on the Academic Board, a matter on which we commented at length in our earlier advice. We particularly welcome the provision in para 92

requiring HEIs to take measures to ensure a high level of mutual understanding between the governing body and the academic board. However, it is also important for the roles and responsibilities of the two bodies to be explained to members of the university community; and to new governors from outside the HE sector, however seasoned they may be in corporate governance elsewhere. This wider understanding would be assisted if the Code were to recommend that each institution should have a formal statement of the Primary Responsibilities of its Academic Board. We do not envisage there being centrally prescribed content for such statements, given the diversity of the arrangements that exist.

4. Principle 6 highlights, as does the current Code, the crucial role of the Chair as leader of the governing body, ultimately responsible for its effectiveness. Yet the new Code says nothing about the responsibility of the governing body to ensure that those who will elect future Chairs (i.e. the staff and student body) will be presented with a shortlist of candidates fully capable of carrying out the role of Chair effectively. This is a clear gap. There is further comment on this below.

Detailed Commentary

Foreword

Within the second paragraph, the Code should include clear reference to HEIs diverse mission and the diverse needs of the Scottish economy.

The Governing Body Primary Responsibilities

The opening description needs to be changed; the governing body should ensure the 'effective governance' of the institution not the 'effective management'.

The inclusion in Principle 1 of a responsibility on the governing body for the institution 'to operate with high levels of social responsibility' seems unexceptionable but when this is exemplified in paras 9 and 10 it seems to introduce matters of an ideological or ethical nature, which seem more to be about the pursuit of government or sectional agendas than governance. It would seem more appropriate for these matters to be included in outcome agreements with government than in a governance code.

The Governing Body has the responsibility to ensure that there is a publically available Code of Practice on reporting malpractice and raising concerns under the Public Interest Disclosure Legislation ("Whistleblowing"). As part of this, the Governing Body should appoint a designated lay member to whom any individual who considers it in appropriate to use any of the other routes specified in such a Code can bring their concerns.

Governing Body Membership

Paragraph 15: The governing body should encourage the bodies that have the power to nominate or elect governors to choose individuals with the relevant skills, attributes and experience.

Governing Body Member Responsibilities

Paragraph 29 and 30 bring into scope of the register of interests those senior officers who work closely with the governing body. We suggest that these officers should likewise be brought within scope of the declaration of interest provisions of para 29.

Paragraph 31 as drafted is potentially too onerous. It should cover only gifts or hospitality offered to the individual in their capacity as a member of the governing body of the institution (or which might be construed as being so offered).

Equality and Diversity

See general comment above.

Paragraph 36: 'The governing body, through its nominations committee or equivalent, should aim to open...', 'aim' should be changed to 'takes steps to'; and similarly in para 37.

Effectiveness

This section exemplifies our general comment about there being too many 'musts' where 'should' often seems more appropriate. In particular, while we support the principle of governing body publishing data such as KPIs and the outcome of effectiveness reviews, we believe that the extent and manner of publication should not be over prescriptive.

Paragraph 41: We support this paragraph and suggest it be made explicit that the electing or appointing bodies should be briefed on the governing body's current skill requirements, thereby increasing the scope for their nominees to contribute fully to the work of the governing body.

Paragraph 44: While para 43 rightly emphasises the importance of induction training for students and others unfamiliar with board roles it is just as important to provide relevant induction training on the unique features of HE structures and culture to lay governors who are new to HE, however experienced they may be in corporate governance in other sectors.

Paragraph 46: Whilst the RSE has argued for the minimum number of annual meetings to be more than 4, it accepts the formulation of 'at least 4', on the basis that the need for more should be left to the judgment of individual governing body.

Paragraph 47: There are differences of view on the effectiveness in practice of annual stakeholder meetings in engaging stakeholder or public interest in the governing body's affairs. We suggest that this provision should be changed to 'should' rather than a 'must'. The last sentence ('may or may not') appears unnecessary.

Paragraph 50: The third sentence should refer to matters which may not be recorded in the published minutes. (No decisions should go unrecorded.)

Para 54: The formulation in line 6, 'these reviews must be reported on appropriately within the institution and outside' gets the balance right. We consider that HEIs should have some discretion in deciding how much detail to report and how, otherwise there is a risk of this becoming an arid compliance process. The important thing is for these reviews to be honest exercises owned by their institutions, seeking to identify areas of underperformance that when acted upon will result in notable improvement.

Paragraph 57: Reflecting the above, we suggest redrafting this so that the outcome of reviews 'should' be published.

Key Roles

Statement of Principle 6 brings out the crucial role of the Chair as the governing body's leader and the person ultimately responsible for its effectiveness. Yet it says nothing about the responsibility of the governing body to secure candidates for chair capable of fulfilling that role to a high standard of effectiveness. The 2016 Act provides that candidates for election as SLA by the staff and student body must first be shortlisted by a committee of the governing body, having demonstrated their ability to meet the requirements of the position. Having stated how important the role of chair is for the HEI's effectiveness, the Code should surely require the governing body to take steps, in compliance with the 2016 Act, to ensure that a choice of well qualified candidates is put before the student and staff electorate; and also to ensure that the electors have a full understanding of the importance of the election for the institution.

We recommend that both statement of Principle 6 and para 65 be amended to make these points.

Paragraph 66: It seems misleading to say the Act provides optionally for remuneration of the chair. The governing body has no option to decline to pay if so requested by the candidate.

Paragraph 82 and 84: There are strong corporate governance arguments for having a lay member majority on both the nominations committee and the remuneration committee. These are instances where 'must', rather than 'should', seems appropriate.

Paragraph 88: It is unclear whether this paragraph seeks to require the remuneration committee to go beyond the members of the governing body in seeking staff, student and trade union views. We consider that the student staff and trade union governors are best placed to provide these views. As a minimum we suggest changing 'must' to 'should'.

Paragraph 89: It is proper that the Remuneration Committee should be mindful of the public interest in reaching remuneration decisions but to require it to 'represent the public interest' seems inappropriate. The primary responsibility of governors, as trustees, is to represent and safeguard the long term interests of the institution as a whole. The requirement in para 87, for the remuneration committee to follow policies approved by the whole governing body, is entirely appropriate in this regard.

This Advice Paper has been signed off by the RSE's General Secretary, Professor Alan Alexander OBE, FRSE.

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