

Business Committee
of the General Council
of the University of St Andrews

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Dear Ian

Review of the Scottish Code of Good Higher Education Governance

Thank you very much for your e-mail of 20 April 2017 and for the opportunity to comment on the draft revised Code of Good Higher Education Governance. We are grateful to you and your committee for the work which has been done in producing the draft.

In our earlier submission, dated 30 September 2016, we wrote: *“It appears that all 19, and varied, HE institutions are substantially complying with the Code, ie it is working. We are unaware of defects or deficiencies in the Code other than those highlighted above. We therefore advocate that as few further changes as possible are made to the Code.”* In other words, we felt that the existing code had struck a pragmatic balance between being over- and under-prescriptive.

For this reason, we welcome the focus in the draft revised Code on just seven high-level principles. However, we note that there are now significantly more requirements for compliance, presumably because of the need to incorporate the provisions of the Higher Education Governance (Scotland) Act 2016. We also note the main clause of the statement *“While the whole Code is subject to the ‘comply or explain’ approach, most of the requirements in it are expected of all institutions”*.

The increased transparency and openness called for by the draft revised Code has the merit of contributing to the objective of *“common understanding of the highest standards of governance”* and to a better understanding on the part of key stakeholders of institutional performance. On the other hand, the additional requirements may well cause additional administrative burden and a stifling of initiative.

In this submission, we have refrained from making further comment on the over-/under-prescriptive issue. Instead, we have concentrated our attention on the detail of the code, as drafted. Most of our suggestions for change are made in the interests of clarity and consistency; some others are designed to protect the interests of stakeholders, such as General Council, a matter that we highlighted in our earlier submission.

Our comments are listed below according to the relevant Section number. We hope that you find them helpful.

(We should point out that Dan Wedgwood of Universities Scotland has confirmed that there was a formatting error in the draft – there is no “Section 16” text and subsequent sections should be re-numbered. Our comments use the Section numbering provided in the draft.)

	<p>Definitions– Lay member It would be useful to mention that the Rector and Chancellor’s Assessor (where such roles exist) fall into the category of “the latter group”. The term ‘appointed’ may be misinterpreted as precluding ‘elected’. We suggest, instead, using the formula ‘appointed or elected’.</p>
9.	The use of the phrase “local or more distant” seems to expand the possible definition of “other communities” whose wellbeing an institution must seek to improve in a way which is too expansive and open to interpretation. We suggest removal of this phrase.
11.	We feel that the term ‘risk assessment’ is only part of the systems required. We suggest it should be replaced by ‘risk management’.
15.	This Section includes the phrase ‘skills, attributes and experience’. However the high-level principle of 2. The Governing Body Membership uses the term ‘a skills evaluation’. We suggest that, for consistency, this should be replaced by the term ‘an evaluation of skills, attributes and experience’. The same applies to the italicised extract of the principle preceding Section 19.
19 / 20.	The implication of Section 20 is that a lay member may be re-appointed without the vacancy being subject to the terms of Section 19. Circumstances may have changed since the member whose appointment period is ending was appointed. Although a nominations committee may recommend re-appointment, should this not be subject to consideration of other possible candidates?
28.	Clarification might usefully be given on the interpretation of “no committee should be restricted to lay members only”: does this mean that all committees should have at least one “non-lay” member or that a committee may have no “non-lay” members if it is deemed by a nominations committee none have “the ability.....to contribute effectively to the committee”?
31.	If the register of interests (Section 30) must be published on an Institution’s website should the register of gifts and hospitality not be made public in the same way? Should Section 31 not cover the same categories as Section 30 – to include the Secretary and senior officers?

	<p>5. Effectiveness</p> <p>In the first sentence of the high-level principle, the term ‘full induction’ is open to interpretation. We suggest that the sentence is replaced with “New members, on joining the governing body, must receive .” The same applies to the italicised extract of the principle that precedes Section 41.</p>
44.	We suggest that a sentence to the following effect should be added: “The Induction programme should be approved by the governing body and made public.”
48.	<p>We appreciate the introduction of the table of definitions in the draft Code which removes some of the ambiguities in the current Code with respect to “lay” and “independent” members of the governing body.</p> <p>The draft now requires a “majority of lay members” rather than “a clear majority of independent members, defined as both external and independent of the Institution”. We assume that the requirement for a “clear majority” was to increase the probability that there would actually be a majority of independent members at governing body meetings. This is supported by the requirement in the Supporting Guidelines for Main Principle – Number 4 in the current Code that: “Members should attend all meetings where possible, and the governing body should establish clearly the number, and the category, of members who constitute a quorum.” The draft Code has moved to “a majority” rather than “a clear majority”, yet the explicit reference to “category” of member in quorum requirements has been dropped. While there are obvious practical issues, we suggest that standing orders should be required to address the question of decisions which should not be taken at governing body meetings in the absence of a lay majority at a meeting. (This might be linked to the matters specified in Section 14.)</p>
49.	<p>According to Section 27 of the draft Code, “All governing body members must be considered full members of the governing body and treated as such. The roles of the Chair, Rector (where there is one) and Principal have distinctive aspects, which are prescribed in legislation, in institutional protocols and in this Code. Otherwise, there are different categories of member only in that there exist distinct routes to appointment to the governing body. Once appointed, all members assume the same responsibilities, obligations and rights and must therefore be expected and supported to participate fully in all governing body business, unless a clear conflict of interest is identified.” This Section 49 seems to imply that a decision can be taken to exclude one or more governing body members from discussions in a way which limits their ability to fulfil their responsibilities and goes further than exclusion of members from discussion / decision making due to a conflict of interest. Who is responsible for making a decision that items should not be open for discussion? What regulations should be in place for reporting to governing body members if they are excluded to ensure that they can fulfil their responsibilities? What facilities should there be for governing body members to challenge a decision that there should not be open discussion?</p>
50.	In the interests of transparency and openness, we suggest that papers considered at governing body meetings should be made available on an institution’s website. We suggest that the words “or intranet” should be removed as this would leave it open to

	an institution to decide not to make papers available on the website. We also suggest a change in wording to clarify that the dispensation not to publish papers does not allow the interpretation that an institution can make the general decision not to make available any papers because it considers it “not to be in the interests of the institution” to do so.
71.	The General Council, where it exists within an institution, has a statutory role in governance matters, and is ‘a key stakeholder body’ along with recognised trade unions and student associations. We therefore ask that ‘General Councils’ should be included in the second sentence of this Section. Not to include General Councils here could imply that they are not key stakeholder bodies.
83.	We suggest the addition of the sentence, “Stakeholder groups which have the right to elect or appoint governing body members should not have that right removed without their consent”.
93.	High-level principle 7 states, “The governing body must ensure the effectiveness of the Institution’s academic board, including its responsibility to uphold academic freedom.” We suggest that this Section should be amended to ensure that there is no ambiguity on the respective roles: that of the academic board in upholding academic freedom and of the governing board in supporting that role.

Thank you again for the opportunity to comment and we wish you well in the completion of the Review.

Yours sincerely

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of the University of St Andrews