

Open consultation: Review of the Scottish Code of Good Higher Education Governance

April 2017

Respondent information

Are you responding as an individual or an organisation?

| | |
|--------------|---|
| Individual | |
| Organisation | ✓ |

Please enter your full name or the organisation's name here

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The Committee of Scottish Chairs would like your permission to publish your consultation response. Please indicate your publishing preference:

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| | |
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This consultation is an open invitation to comment, not limited to a specific set of questions. We welcome your views on any aspect of the *content* or *structure* of the draft revised Code. (Please do not comment on superficial presentational issues. This draft does not show the final formatting of the document, which will be finalised following the consultation.)

If your response contains multiple comments and/or covers different elements of the Code, please structure your response accordingly, separating different points clearly. Please refer to paragraph or page numbers where possible.

**Revised Code 2017: Consultation Response
University of Dundee**

The University thanks the Steering Group for this opportunity to comment on the draft Code.

The University welcomes the organisation of the document into the seven broad thematic areas. This helps a sense of clear structure, and works as a convincing navigational aid to the document. The University is glad to see the 'comply or explain principle' retained, thus enabling diverse institutions with different governance approaches and systems to seek to address sections of the Code in other ways whilst providing justification. The University also welcomes the rebalancing of the Code to make clear the equality of inputs and importance of contributions across all membership categories.

The University has specific comments on some individual paragraphs of the Code and these are given later in this response. However, the University has a number of concerns in general about the tone and tenor of the Code.

The University is concerned that the Code as now structured reads as very prescriptive in nature, with additional reporting requirements, either through institutions' web pages or the financial statements. There is a fear that rather than setting parameters of good practice, within which universities can foster governance innovation, the code through its high levels of overt prescription exacts governance requirements with little room for developing and sharing best practice as circumstances and thinking change. There is a risk that governance through this approach may become a box-ticking exercise and thereby overly focused on compliance rather than innovation. This would be fundamentally against the spirit of good governance and would not be in keeping with an enhancement-led approach. Universities do, of course, need to be accountable, but this should not merely be achieved by adding new reporting requirements. The University would encourage the Steering Group to review the number of reporting requirements contained in the Code, with a view to reducing them.

With these requirements comes also the burden of developing systems to both comply and moreover to evidence compliance, when the focus should be on good governance itself. With greater diversity in the membership of governing bodies through the inclusion of trade union nominees, for instance, there will be a wider range of opinion at meetings which will inevitably lead to the development of new governance approaches. Prescription would vitiate the opportunity to exploit new ideas in innovation.

The introduction of the 'must'/'should' approach reinforces this sense of prescription, and the sheer number of 'musts' in the document as it is now structured is deeply problematic. In addition, whilst the approach may promote clarity, it will stifle debate. Moreover, the University is concerned that

there will be insufficient distinction between 'must' and 'should' in practice, and that as a result both are likely to have equal force, or in other words universities will come under pressure to adopt all 'should' statements as if they were 'must'. The overall effect in the Code is that every paragraph sets out a requirement, and there is no encouragement to determine best practice. It therefore reads as a Code of Compliance, not a Code of Good Governance.

There is a sense from the drafting of the Code that the sense of identity of the sector has been lost. Higher Education is marked out by its diversity, independence and autonomy and the broad approach in the Code risks undermining this independence for the sake of uniformity.

The Code is silent on how compliance might be judged, and the University suggests that more detailed thought should be given to this to enable the sector to understand the administrative burden of compliance, both for governing bodies themselves and for the body or bodies charged with monitoring that compliance.

In terms of specific paragraphs, the University would make the following observations:

In paragraph 9, governing bodies are required to ensure policies are ethical and sustainable, but the Code is silent on how a governing body might determine what that should mean. Issues of ethics and sustainability are arguably subjective, and so it is difficult to know precisely how a governing body's compliance with the Code in this respect could be measured.

In paragraph 21, there is a suggestion that the term of office of a Chair elected from within the governing body might be restricted to a single term. The University would argue that this fundamentally undermines the democratic principle inherent in HEG(S)A and that the electorate should be trusted to determine which of a range of candidates to elect irrespective of their background. This suggestion appears to act as interference in an electoral process, and therefore should be removed.

In paragraph 24, the University welcomes the strengthened wording in relation to members' obligations not to act as if delegated to do so by a particular constituency, and the explicit reference to charity legislation is also very welcome. There is, however, a need to convey the principle of collective responsibility: i.e. that all members of the governing body have the right to express their views on particular issues, to use their powers of persuasion to seek a particular outcome, to voice their dissent in relation to a particular course of action or vote against a motion or proposal, but once the governing body has reached its final decision all members have the responsibility to respect and support the collective corporate decision so reached.

In paragraph 28, the case is made that no category of membership of the governing body should be excluded from membership of any committee by virtue of the category of the governing body member. The University accepts the careful wording of this paragraph to avoid a suggestion that all committees should have non-lay membership, and that membership of committees should be determined on the basis of possessing the relevant skills. Even so, there is a risk that the effect of the paragraph will be to mandate non-lay membership for all committees; and this will not always be appropriate on the basis of skillset. The University would point out that section 2.2.4 of the CUC Handbook for Members of Audit Committees in Higher Education Institutions includes the following:

'The governing body should endeavour to ensure that all audit committee members are independent and objective. Employees of the institution and the chair of the governing body are generally not considered independent, and should therefore not be members of the audit committee.'

The Code would seem to be incompatible with the handbook. The handbook is widely used by Audit Committees as guidance with regard to their roles, responsibilities and operation. The University would suggest that this discrepancy should be addressed explicitly. As drafted the Code might suggest that membership by the Principal of the Audit Committee, for instance, was acceptable, where in fact this would be inappropriate.

Footnote 6 at paragraph 67 should be amended in relation to the University of Dundee to read 'At the University of Dundee, the Rector is elected by the student body and may choose to act as an *ex officio* member of the governing body or appoint an assessor following consultation with the students' association; neither the Rector nor his or her assessor automatically presides at meetings of the governing body.'

In paragraph 88, there is a requirement to consult with staff and students on the remuneration of the executive team. Whilst the University is supportive if that consultation was focused on the staff and student members of the Court who will be familiar with the objectives and performance of the executive team, it is not convinced that a broader interpretation of this requirement would be reflective of good practice, would necessarily be objective, or would provide the public with confidence in underlying decision-making processes.

University of Dundee

June 2017

Thank you for responding to the Review