

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

April 2017

Context

In 2016, the Committee of Scottish Chairs (CSC) of Scottish higher education institutions launched an evidence-based Review of the Scottish Code of Good Higher Education (HE) Governance (henceforth 'the Code'). The review was entrusted to a Steering Group whose membership includes all major stakeholder groups. Independent consultants from the [Leadership Foundation for Higher Education](#) were commissioned to collect and analyse evidence from an open public consultation, a survey of governing body members and extensive consultation with stakeholders at each institution and at national level. Full details of the Steering Group and the evidence-gathering process can be found at scottishuniversitygovernance.ac.uk.

The Steering Group has now completed its review and has produced a draft revised Code. This seeks to recognise and reflect the continuous evolution of best practice in governance and to accommodate changes that follow from the [Higher Education Governance \(Scotland\) Act 2016](#). Views are now sought on the draft revised Code.

How to respond

Please complete these questions using the online response form before **21 June 2017**.

Alternatively, please email a response to the consultation, including your completed respondent information details, to dan@universities-scotland.ac.uk or send a written response to the consultation by post to:

Daniel Wedgwood, Universities Scotland, Holyrood Park House, 106 Holyrood Road, Edinburgh EH8 8AS.

Respondent information

Are you responding as an individual or an organisation?

Individual	
Organisation	X

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:

NOTE - If you are responding on behalf of an organisation, anonymous publishing refers only to your name, not your organisation's name. If this option is selected, your organisation name will still be published.

Publish response with name	X
Publish response only (anonymous)	
Do not publish response	

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.

1. Thank you for the opportunity to comment on the draft revised Code of HE Governance. The University of St Andrews recognises and appreciates the great deal of hard work undertaken by the Steering Committee in producing the revised draft. Our comments are intended to assist the production of a document that will be of real and lasting benefit to supporting good governance across the HE sector. The elements of this response were agreed by the University Court at its meeting on 16 June 2017.
2. The University of St Andrews welcomes the shortening and simplification of the revised draft Code compared to the 2013 Code, although it still remains a lengthy and detailed document. We also welcome its acknowledgement of the diversity and unique position of HE Institutions. We believe this could be strengthened further with the inclusion of a clear introductory statement of the core purpose of Universities. This could reinforce the current reference to the sector's commitment to high standards of governance with an acknowledgement of the progress that has been made since 2013. It should be made clear that the purpose of the revision of the Code is not to tackle systemic failures or shortfalls in governance, but rather to enhance good practice and maintain high standards.
3. We support the move towards a smaller number of high level principles, and especially applaud the inclusion of equality and diversity as a key principle, and the recognition that the draft Code gives to Court's leadership role in this important area.
4. We also welcome those areas where the draft Code recognises the need for greater flexibility. In particular, important and welcome flexibility is provided on the size of Courts, which may as a consequence of the HE Governance (Scotland) Act 2016 have to increase beyond the ceiling of 25 members previously regarded as good practice; and in relation to the role of the Chair, where the draft Code recognises the distinction between defining the duties of the role and allowing flexibility over how those duties are discharged.
5. It will be important, however, for the Code to allow Institutions the discretion to develop their own proportionate approaches to compliance, if the Code is genuinely to realise its stated intention of supporting the diversity of the Sector and the autonomy of institutions. We have concerns about the cumulative impact of the overall increase in prescription, standardisation and control required by the 230+ statements of absolute compliance. There is at times an excessive amount of detail sitting beneath the high-level principles. This risks the creation of a significant bureaucratic burden of additional processes and reporting requirements, distracting effort and attention away from improving Court members' understanding of their roles and responsibilities.
6. Examples of areas where flexibility and proportionality will be particularly important include the operation of hospitality registers (especially for offers declined), the drafting and publication of Court papers, and the publication of results of effectiveness reviews. Whilst

these are all important areas for the demonstration of good governance, the degree of prescription contained in the current draft Code is excessive, and implies a one-size-fits-all approach of tick-box compliance.

7. In some areas, the draft Code appears to overlap with and go beyond other existing reporting obligations. These include the CSC guidance on Remuneration Committees, the CUC Higher Education Code of Governance, and statutory reporting requirements such as the Equalities Act 2010 and the Scottish Specific Duties. It will be important in revising the draft Code to clarify where such areas of overlap occur, and to ensure consistency with other relevant guidance – or, where appropriate, to state explicitly that the new Code replaces existing guidance. Similarly, it should be made clear whether Institutions are still expected to demonstrate compliance with those requirements of the 2013 Code that have not been replicated in the new Code, or whether these are to be “retired”.
8. The approach to Court Committee membership is particularly unclear and in places contradictory. The statement in para 28 that “no committee should be restricted to lay members only” is directly contradictory to existing standards of good governance for Audit Committees, set out for example in the CUC Handbook for Members of Audit Committees in Higher Education Institutions, the UK Corporate Governance Code and the Scottish Government’s Scottish Public Finance Manual.
9. Further specific comments and proposals for change are outlined at Annex.
10. Making the transition to demonstrating compliance with the new Code will inevitably be a complex process. A number of the compliance requirements will not be possible until the HE Governance Act (Scotland) 2016 is fully in force, and a substantial transition period will be necessary following CSC approval of a final version of the Code.

ANNEX

Detailed Commentary and proposed amendments

Page 2, second paragraph The final sentence reads, *“In particular, in the case of the Small Specialist Institutions, the Code should be applied with attention to the principles of proportionality and of relevance to the nature of the individual institution.”* Suggest changing to, *“Particularly in the case of.....”*

Rationale – the existing wording restricts the application of the principles of proportionality and relevance to the SSIs – they should apply to the whole sector.

Page 3, Definitions, Table In the “Elected or Union Staff Member” box, change *“Trade Union appointees”* to read *“Trade Union Nominees, of which at least one must be nominated by a union representing academic staff and one by a union representing non-academic staff”*

Rationale – this change brings the Code into line with the wording of the legislation, which refers to a person “appointed by being nominated by a trade union”. The Union makes the nomination, but it is Court that makes the appointment by accepting that nomination.

Section 2, Governing Body: Membership

Page 7, para 16 is missing. We understand this is a formatting error.

Para 18 It seems unnecessarily detailed to require annual statements about *“how the size and composition of the governing body contributes to maintaining a coherent and effectively functioning governing body”*.

Section 3, Responsibilities of Governing Body Members

Paras 23-26 The emphasis on collective responsibility of members is welcome, in particular the reference in **para 24** that “*no member may be bound...by mandates given to him/her by others, or drawn from an electoral platform*” It could be strengthened further by a reference to members having to respect the confidentiality of papers (even when pressed by the constituency that placed them on the Court).

Para 25 – “*Members of the governing body must also take care not to become involved in the day-to-day executive management of the Institution, excepting those who are employed by or students of the Institution, and in these cases only to the extent that they have executive responsibilities in the course of their employment or their activities as students or trade union representatives.*”

Suggest deleting the second half of this sentence, and replacing it with “*in their capacity as members of the governing body*”.

Rationale – as drafted it is confusing, and could blur the distinction between responsibilities.

Para 31 “*The institution must also maintain a public register of gifts and hospitality offered to governing body members (including offers that were declined and why).*”

Suggest deleting this and replacing with “*Governing body members should have regard to the Institution’s policies relating to the acceptance of gifts and hospitality*”.

Rationale – whilst a reference to good practice and preserving the reputation of the institution is justifiable, albeit already covered by the Annex defining the Nine Principles of Public Life in relation to HE Institutions, detailed rules would have to be developed for operating a separate public register and the inclusion of offers declined and the reasons why would be extremely hard to police.

Section 4 Equality and Diversity

Overall, this is a very welcome and important inclusion in the Code, although care will need to be taken not to replicate existing reporting requirements. The Equality Act 2010 and Scottish Specific Duties already require detailed public reporting on a biennial basis, including on the composition of the governing body, as well as the publication of a four-year action plan. As currently drafted, the Monitoring Report required by para 33, and the annual report on goals regarding the composition of the governing body required by para 40 risk introducing an unnecessary degree of duplication.

Section 5, Effectiveness

Para 47, “*In addition to normal meetings of Court, an annual stakeholder meeting must be held in public at which the Principal and the governing body must give a public account of the institution’s performance and should be available to answer questions*”.

Suggest changing to: “*...at which representatives of the governing body, including the Principal, must give a public account...*”

Rationale – Whilst welcoming the ambiguity over whether this needs to be a formal meeting of the governing body, the implication of the current wording is that it has to be a quorate meeting of Court, which raises issues of practicality. The alternative wording allows for more flexibility, whilst preserving the intention of an open meeting. For St Andrews, one possibility would be to combine the annual public stakeholder meeting with one of the General Council meetings.

Para 50 “*Standing orders must specify the kinds of matter that may not be recorded in the minutes for reasons of confidentiality. The papers considered at meetings should be made available on the institution’s website or intranet, unless this would breach confidentiality or would not be in the interests of the institution.*”

Propose deletion of both these sentences

Rationale: This is overly prescriptive in attempting to specify how Court papers should be written. Court minutes are already published, and all Court documentation is subject to the FOI(Scotland) Act. Placing a proactive requirement to publish will not create greater transparency and could undermine the quality and frankness of information presented to Court. Requiring all Court and Committee documentation to go through a process of redaction (as opposed to doing so when requested under FOISA) would be a substantial additional bureaucratic burden.

Para 54 Externally facilitated reviews are required every five years and *“should be held following any period of exceptional change or upheaval.”*

The requirement for externally facilitated reviews was contained in the 2013 report, but has any evaluation been carried out of the value these have added as opposed to reviews carried out within the institution?

Para 57 *“The results of effectiveness reviews....must be published widely, including on the Institution’s website”* A review that is conducted with a view to public consumption is less likely to be challenging, frank and transformative than one that is conducted with a view to improving the effectiveness of the organisation.

Section 6, Key Roles

The recognition in para 58 that the role of Chair may be associated with more than one individual under legislation is welcome and pragmatic.

Paras 65, 66 refer to the process for appointing the post of Senior Lay Member introduced by the HE Governance Act. Since the Code is not intended to interpret the Act, it’s unclear why these paragraphs are considered necessary.

Para 73 *“Views must be sought [on the performance of the Principal] from staff, trade union, student and lay members of the governing body”*

Suggest replacing with *“Views must be sought from all members of the governing body”*.

Rationale – By prescribing categories of court member there is a risk of excluding positions such as that of the Rector and Senior Lay Member from consultation. This is also inconsistent with the earlier statements in the Code that *“there are different categories of member only in that there exist different routes to appointment”*¹.

Section 7, Committees and Academic Board

Para 82 States that the Chair should normally chair the nominations committee. The St Andrews model, where there is an external chair of Government and Nominations, was accepted by SFC as compliant with the previous Code and was cited by KPMG as an example of sectoral best practice in their 2015 governance audit.

Suggest adding *“...or where the Institution appoints an external chair to the nominations Committee”* after *“who should normally chair the Committee”*.

Rationale – reflects an alternative approach that is recognised as good practice.

Para 84 There is a potential contradiction between the requirement for the audit committee to be *“a small, authoritative body which has the necessary financial expertise”* and the previous requirement (**para 28**) that *“no committee should be restricted to lay members only”*.

Paras 86ff relate to the function of the Remuneration Committee. It is not clear whether this guidance replaces the CSC guidance on Remuneration Committees or is intended to

¹ See para 27

supplement it. If the latter, it should focus only on those issues which have changed or are new since the 2015 guidance, and refer to it as the definitive document. At present, it contains elements of both. The reference in **Para 89** to representing the public interest when *“considering severance arrangements for senior staff”*, for example, appears more restrictive than the 2015 guidance which encompasses threshold sums, standard severance terms and excessive packages. And what, in this context, is meant by “senior staff”? The 2015 guidance is explicit in linking this to the Senior Management Team.

Para 88 introduces a new formal requirement to seek views of students, staff and trade unions in relation to the remuneration of the Principal and senior executive team, and states, *“This requirement may be implemented in part through relevant members of the governing body serving as members of the remuneration committee or attending its meetings, or may be achieved through separate consultation with representatives of the student and staff communities”*. The implication of this is that Remuneration Committees would be required to include both a student and trade union representative, (which contradicts the statements under Section 3 around removing the distinction between categories of Court members) or a separate process would need to be introduced and agreed by Court. Either way, it introduces an additional layer of bureaucracy.

Thank you for responding to the Review