

Via online survey: Committee of University Chairs

12 March 2018

### **CUC Consultation – Draft Remuneration Code**

ICSA: The Governance Institute is the professional body for governance. We have members in all sectors and are required by our Royal Charter to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With 125 years' experience, we work with regulators and policy-makers to champion high standards of governance and provide qualifications, training and guidance.

We are the professional body qualifying and supporting chartered secretaries and governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, company law, administration and governance, which enables them to add value to any organisation.

ICSA has an extensive pedigree in the governance arena, advising governments and regulators on company law, charity law and governance issues. The breadth and experience of our membership enables ICSA to access a variety of applied experience in order to provide insights into effective practices across a range of organisations. Our members' wealth of expertise and experience, together with their detailed understanding of charity and company legislation and regulation, has informed our response to this consultation.

### **Survey responses**

**1. Name**

Craig Beeston

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**3. In what capacity are you responding to this consultation?**

Representative organisation, business, or trade body

**3a. If you selected other, or if you are responding from another type of organisation, please specify.**

n/a

**4. Please state your location outside England (if applicable)**

n/a

**4a. If you selected Other, please specify**

n/a



**Please indicate whether you agree or disagree with the following statements and provide an explanation in the comments box.**

**5. The overall approach set out in the guidance is reasonable.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**5a. Comments**

We agree that the structure of the guidance is, in the main, correct. We have noted one or two instances where points made or additional detail given in the Explanatory Notes might benefit from being moved to earlier in the document.

**6. These proposals will lead to more transparent explanations of senior post holder remuneration being provided to the public.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**6a. Comments**

We welcome the move to increase transparency around senior post holder remuneration, an issue which has a significant impact on levels of engagement within organisations and on trust among stakeholders. However, the effectiveness of the proposals will depend to a significant degree on the amount and type of information which Higher Education Institutions (HEIs) provide to the public. It is important that institutions set remuneration decisions in the context of their individual operating environment. Stakeholders, including the public, need a good understanding of the demography of the organisation, its market and the value added by senior post holders if they are to make balanced judgements about pay decisions. To this end, it is important that the type of context detailed in the Preamble is conveyed to observers in order to set out the circumstances of the particular HEI.

If senior post holder pay is to be assessed effectively, HEIs must avoid presenting data in too limited a form. Failing to set pay decisions in context risks an unfair appraisal of decisions made. Similarly, there are pitfalls around presenting pay ratios with inadequate context. 61% of respondents to a poll conducted by ICSA and The Core Partnership in October 2017 felt that published pay ratios would be used to unfairly criticise organisations, for instance allowing the debate to be determined by headline statistics without the data and narrative which would enable proper assessment.

Conversely, a more comprehensive narrative, which also demonstrates the value brought to an institution in terms of performance, skill set and experience, can enable a more nuanced appreciation of the appropriateness of pay levels. This is reflected in Paragraph 24 of the guidance.

Transparency also requires making available to stakeholders the processes by which decisions are made, and the persons responsible for making them. It might therefore be appropriate for the terms of reference and membership of the Remuneration Committee to be available not only in the annual report or financial statements, but also on the governance pages of the HEI's website.

A good example of making information on remuneration accessible to stakeholders is the National Council for Voluntary Organisation's 'two clicks to clarity' initiative, prompting institutions to publish details about their pay in an easy-to-reach section of their website, ideally no more than two 'clicks' from the homepage.

**7. These proposals will improve the linkage between the remuneration of senior post holders and other staff within institutions.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**7a. Comments**

It is important for a meaningful assessment of senior pay that decisions are set in the context of the institution's approach to the remuneration of all its staff. Respondents to the ICOSA/Core Partnership poll suggested that a meaningful analysis of executive pay may require more detailed data about the remuneration of the wider workforce of an organisation than simply a publication of a pay ratio. This could include: pay band details, inter-band comparisons, benefits offered, the prevalence of bonus payments, flexible working conditions, and gender pay gap data. It is therefore encouraging to see that this is reflected in Principle a) under Element I and in Paragraphs 26 and 41 of the Explanatory Notes. We suggest, however, that a clearer indication of the type of information which sets this context is presented.

**8. These proposals will improve the governance of senior post holder remuneration.**

Strongly agree/**Agree**/Disagree/Strongly agree/No opinion

**8a. Comments**

A number of the proposals in the Code are sensible in terms of achieving improvements in the governance of senior post holder remuneration.

The requirement for HEIs to publish their pay ratio, if implemented and used correctly can help the institutions to undertake useful longitudinal analysis and appropriate comparisons with similar organisations in order to monitor and improve their remuneration policies. We are confident that the Committee has considered the potential for unintended adverse consequences of such a publication, such as discouraging cuts in highly-paid staff or prompting an increase in outsourcing and contracting out of low paid roles in order to allow institutions to divorce themselves from responsibilities for staff or workers who provide those services.

**9. This guidance will assist institutions in demonstrating the value for money secured from the funds at their disposal.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**9a. Comments**

Some of the proposed guidance contained in the Code will help HEIs to achieve value for money in their remuneration policy. This will particularly be the case where pay is linked to performance and adequate consideration is given to the value which senior post holders add to the institution. Effective demonstration, however, of value for money will depend on HEIs presenting a full narrative of remuneration policy and the decisions reached. The Code is correct that this should include the metrics used for calculating performance-related pay (PRP), and the contribution made by the recipient to organisational performance.

It is worth noting that, whilst value for money can be achieved and demonstrated in the expenditure of all sums, senior remuneration represents a relatively small proportion of HEI spending. Despite the media interest in the pay of the Vice-Chancellor of the University of Bath, for example, the total remuneration package of £451,000 in 2015-16 ought to be set against the University's total income for the same year of £263m (0.17%) and an expenditure of £249m. Institutions should be encouraged to pursue value for money in all areas of spending, particularly when they are in receipt of public money and, rightly or

wrongly, they are deemed to operate in the public sector. However, any answer to this question must acknowledge that remuneration policy can only demonstrate value for money in one area of expenditure.

- 10. This code makes it clear that it is independent members of the governing body who are accountable for the remuneration of senior post holders.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**10a. Comments**

We are not certain that Q10a, in its specific wording, reflects the content of the Code. All members of the governing body, independent or otherwise, are jointly accountable for all decisions taken, including those around senior post holder remuneration.

The Code (Element II Principle b) states that Remuneration Committees should be 'as independent and expert as possible'. It might be beneficial to amend this wording to 'Remuneration Committees should be independent and as expert as possible'. This would reflect the requirement that the Committee be composed of members who are independent of the institution's management, excludes the Head of Institution (HoI) and that no person attends a meeting where their remuneration is under discussion (or receives information pertaining to the discussion surrounding their pay), but also that at least one member of the Committee has expertise in the field of remuneration (Explanatory Notes, Paragraph 50). It is worth noting that the exclusion of persons from discussions of their pay will necessitate attention being paid to the recording of meetings. The HEI and the Remuneration Committee's policies on minute taking and disclosure will need to reflect what information is to be made available to relevant individuals.

- 11. The preamble gives sufficient context to ensure that those reading the code understand the nature of the task in determining remuneration within HE.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**11a. Comments**

Whilst in the main the Preamble provides important context to the issue of remuneration, there are further issues which may be worthy of inclusion. For example, alongside the variety in size and area of operation which are experienced by HEIs, it may also be useful for the public to appreciate the differences in legal forms adopted by institutions. For instance, it may influence people's assessment of remuneration – and other issues – to know that many HEIs are exempt charities. Similarly, in order to compare senior pay in HEIs with that in other sectors, it would be useful for observers to know when an institution operates as a Royal Charter body, a company limited by guarantee, a private for-profit enterprise, or under another legal form. This would ensure that legitimate like-for-like cross-sectoral comparisons can be made.

- 12. The code uses the notion of 3 elements required for fair and appropriate remuneration – a fair and appropriate level; procedural fairness; and transparency and accountability. Do you agree with these?**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**12a. Comments**

We agree that these elements are sensible.

**13. Are there any other elements that should be explored? Please explain.**

We have no further suggestions for additional elements.

**14. Element 1 is a reasonable statement of what a fair and appropriate level might mean.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**14a. Comments**

There might be a case to be made for amending the wording of Paragraph 21 to reflect that an appropriate and justifiable level of remuneration is not only sufficient to recruit, retain and motivate staff of appropriate calibre, but also that it does so without paying more than is necessary, having regard to the views of stakeholders. This is to a degree implicit in a value for money test and also in Paragraph 23 under Element III where it is noted that senior post holders must be fairly – but not excessively – rewarded for their work. Element I may benefit from these points being made more explicitly.

It may be for individual HEIs to determine, but it is not clear from the wording of Element I what constitutes an ‘institution’s success’ against which a senior post holder’s contribution can be measured. The underlying principles and the Explanatory Notes refer to ‘annual objectives’ and performance measures set by the governing body, but it is not immediately apparent what these concern. They may of course relate to the institution’s business performance, but one should not lose sight of the fact that an HEI’s principal aim (and as exempt charities this will be explicit in their charitable objectives) is the provision of education. Examples of possible factors are given in Appendix 1 Paragraphs 6 and 14. These could be discussed more prominently earlier in the document. This may take the form of mentioning in the principles the need to reflect both educational and business performance, with a more detailed breakdown given in the Explanatory Notes.

We would make the relatively minor point that it is not clear what is meant in the opening sentence of Paragraph 21 that HEIs deliver the best outcomes for the economy. Does this refer to the local economy (in which an HEI can be a significant motor), the national economy (on which individual HEIs can have only a limited impact), or should it be taken to mean ‘public investment’? Moreover, there could perhaps be an indication of how these outcomes are intended to be measured.

**15. The set of principles that underpin Element 1 are reasonable.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**15a. Comments**

We would question whether the Code presses sufficiently strongly the possibility of linking remuneration to performance. Paragraph 32 of the Explanatory Notes explains why some HEIs do not consider performance related pay to be appropriate for their circumstances and we are also cognisant of the hazards of poorly-designed schemes. However, we are also of the view that Remuneration Committees need to be bolder in setting structures which are aligned to performance. Moreover, the absence of PRP considerations strips Principles c), e) and h) of some of their potential for impact. For example, what would be the consequences of non-achievement of expected contribution?

It seems reasonable to reward the value added by senior post holders and to make pay contingent on this. It will be for HEIs (or more specifically the Remuneration Committee) to approve the design of, and determine targets for, PRP schemes and to approve total payments made under such schemes. This might comprise a base salary with further benefits according to targets achieved. ICSA is of the view that a significant proportion of

remuneration should be structured so as to link rewards to corporate and individual performance and the promotion of the long-term success of the HEI.

Though it is done so in part in the Explanatory Notes, the Code should make more explicit the link between Principle j) and the institution's conflict of interest policy.

**15b. Are there any other principles that should be included for Element 1? Please explain.**

We do not have further suggestions for additional principles.

**16. Element 2 is a reasonable statement of what procedural fairness might mean.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**16a. Comments**

We agree with this statement of Element II.

**17 The set of principles that underpin Element 2 are reasonable.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**17a. Comments**

Whilst the terms of reference for the Remuneration Committee are covered in Paragraph 44 of the Explanatory Notes, we suggest that the demonstration of procedural fairness might benefit from this requirement being 'promoted' to the principles section of the Code. Making the terms of reference available to the public and other stakeholders would also contribute towards institutional transparency.

We think that Principle e) may properly belong under Element II – Transparency and accountability

**17b. Are there any other principles that should be included for Element 2? Please explain.**

In the interests of fair procedure, it may be advisable to include in the principles having the HEI's policy on calculating and deciding on senior post holder remuneration set out in a formal document and made available to stakeholders. This relates also to Element III, but if senior post holders and stakeholders alike are fully aware of the process behind pay, the factors used to arrive at decisions and the data which justifies them, then all parties can be clear on the appropriateness of the those decisions.

**18. Element 3 is a reasonable statement of what transparency and accountability might mean.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**18a. Comments**

As noted above, we would query the reference to the interests of the economy. It is not clear what is meant by this.

**19. The set of principles that underpin Element 3 are reasonable.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**19a. Comments**

We refer back to the cautions we noted in response to Q7a as regards the publication of a pay ratio and reiterate our point that such statistics must be accompanied by sufficient data and narrative to enable useful comparison and context-setting.

It should be specified in the principles that the pay ratio to be published is that of the HoI. This is stated in Paragraph 60 of the Explanatory Notes. Paragraph 25 and the italicised statement of Element III make reference to senior post holder remuneration, aggregate senior post holder remuneration and that of the HoI before introducing in Principle b) the requirement to publish a pay multiple. This could be clarified. In a number of cases in the consultation document the text switches between senior post holder and HoI. We would suggest that the drafting is made clear as to what is required of each.

**19b. Are there any other principles that should be included for Element 3? Please explain.**

We do not have further suggestions for additional principles.

**20. The explanatory notes are useful.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**20a. Comments**

In the main, we find that the explanatory notes are useful. However, we have noted in previous questions that some areas may benefit from additional guidance.

**21. There are some explanatory notes that are problematic.**

Strongly agree/Agree/**Disagree**/Strongly disagree/No opinion

**21a. Comments**

None.

**22. There are principles that need further explanatory comment.**

Strongly agree/Agree/**Disagree**/Strongly disagree/No opinion

**22a. Comments**

None.

**23. I believe that this code will help to improve public confidence in the role of remuneration committees in HE.**

Strongly agree/**Agree**/Disagree/Strongly disagree/No opinion

**23a. Comments**

The proposals in the draft code, if adhered to in full and presented clearly to stakeholders, should improve public confidence in the role of the Remuneration Committee. However, this would also be helped by the availability of clear terms of reference for the committee and the publication of the policies they use to determine pay to senior post holders.

**24. Please make any additional comments about this draft code here.**

We must raise the possibility of disappointment if an intended target of the Code is a reduction in Hol pay in absolute terms. Twenty years of benchmarking in the corporate sector has not achieved this and an increase in disclosure can have the unintended consequence of driving pay levels upwards. Despite this, it is encouraging to see an attempt to tackle the issue of senior post holder pay. It is important that standards are set in terms of the processes by which decisions are made and the information which is made available to stakeholders.

Appendix 3 on severance payments makes a number of reference to HEIs as charities. We pose the question whether it might be beneficial to make similar references more prominently elsewhere in the Code. It is a key duty of members of the governing body as charity trustees to spend charitable funds in furtherance of the institution's objects and to have regard as to how this is done. It is also a relevant factor in stakeholders' consideration of remuneration decisions as they may hold the view that charitable institutions should take a particular approach to senior pay.

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