

# CUC

Committee of University Chairs

## **The Higher Education Code of Governance**

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# The Higher Education Code of Governance

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## Foreword

The contribution of good governance to long term organisation sustainability and success is widely recognised and is evident in the growing expectations and demands placed on governing bodies.

The Higher Education Code of Governance has been developed to support governing bodies deliver the highest standards of governance across their institutions. This Code's primary audience is HE providers governing bodies, however, the thinking that underpins the Code can be applied by any organisation seeking to improve its governance practices.

The purpose of the Code is to identify the key values, principles and elements that form an effective governance framework. However, good governance practice is complex and goes beyond the adoption of the Code. Effective governance requires an organisational culture which gives freedom to act, establishes authorities, accountabilities and at its core has relationships which are based on mutual respect, trust and honesty.

By visibly adopting the Code, governing bodies demonstrate leadership and stewardship in relation to the governance of their own institutions, and in doing so help to protect institutional reputation and provide a level of assurance to key stakeholders, partners including the student community, and society more widely. The Code needs to be read alongside the governing instruments of HEIs and relevant legal and regulatory requirements that, so far as possible, are not repeated in the Code itself.

While this Code takes account of international and national trends and developments, governance does not stand still. As the expectations of governance change, this Code itself will be reviewed regularly to ensure it remains fit for purpose – normally this will take place every four years.

## Using the Code

The Code sets out the key values, principles and elements which enable Higher Education Providers (HEPs) to demonstrate their commitment to good governance.

The autonomy and diversity of Higher Education providers is one of the great strengths of the UK Higher Education sector. Therefore, there is a need to ensure governance arrangements are proportionate and can apply to Institution irrespective of their size, complexity and legal form. Accordingly, this Code is premised on an 'apply or explain' basis, where providers are given a set of values, principles and elements, but they are not mandated to comply with everything. They can choose which parts of the Code apply to them; however, they are expected to explain and be able to justify the reasons behind their choices.

So, each provider will decide how best to implement the Code and adopt a governance model which is proportionate and effective for their set of circumstances. Higher Education Institutions in the devolved nations will need to consider the Code in the context of their legislative and regulatory environment. Scottish institutions, in particular, will need to first look to the Scottish Code of Good Higher Education Governance ([www.scottishuniversitygovernance.ac.uk](http://www.scottishuniversitygovernance.ac.uk)).

While compliance with the Code is voluntary the adoption of the Code is a valuable source of assurance to stakeholders who need to have confidence in the governance arrangements of HE providers. Institutions that adopt the Code confirm that they do so within the framework of publicly available reporting on corporate governance e.g. annual reports or financial statements.

Governing bodies will need therefore to consider how best to communicate to their stakeholders the extent of their compliance with the Code, though many will choose to set out a statement within their annual accounts.

The Code does not address how the Code should be implemented. This is intentional and aims to reflect the diversity of the sector and support flexibility and autonomy. The CUC will collaborate with other organisations to provide more detailed advice on implementation in due course.

## Values

At the heart of higher education delivery across the UK are a set of core values. These are the:

- Provision of high-quality research, scholarship and teaching;
- Protecting the collective student interest and ensuring student outcomes reflect good social, economic and societal value;
- Enabling anyone with an interest in accessing higher education to enter into, succeed in and progress from academic studies;
- Publication of accurate and transparent information that is widely accessible.
- Promotion of inclusive practice and diversity.

These values together with the 'Nolan Principles of Public Life' (reproduced for ease of reference at Appendix 1) provide an ethical framework for the personal behaviour of governors and boards as corporate entities and are the foundations blocks of this Code.

## Objectives

In addition to these principles, the Code is underpinned by an understanding of what future higher education governance will need to deliver if it is to meet the challenges of sustainability, growth and change. The objectives are to:

- Support the delivery of the provider's mission and success;
- Maintain, and enhance, trust in high education providers in delivering public benefit and contributing to economic and social growth;
- Protect institution autonomy;
- Manage risk effectively to sustain reputation and provide the flexibility and agility to respond to opportunities;
- Promote and develop diversity and inclusive practices;
- Engage meaningfully with relevant stakeholders locally, regionally and nationally.

It is important that, within providers the executive, governing body and secretary develop a shared understanding of these values and objectives and how they wish to apply the individual parts of the Code. Good governance requires more than the development of processes, since it is built on strong relationships, honest dialogue and mutual respect.

# The Six Primary Elements of Higher Education Governance

This Code identifies six primary elements that embody the core values, assist in delivering the objectives and provide the basis for good governance in the UK higher education sector. The six elements are all interrelated and should not be read, or applied, as standalone elements.

- 1 **Accountability** - The governing body is unequivocally and collectively accountable for institutional activities, approving all final decisions on matters of fundamental concern within its remit.
- 2 **Sustainability** - Working with the executive, the governing body sets the mission, strategic direction and values of the institution. It receives assurance that delivery of the strategic plan is in line with legislative and regulatory requirements, institution values and wider institutional policies and procedures and that effective systems of control and risk management are in place.
- 3 **Reputation** - The governing body safeguards and promotes institutional reputation and autonomy by operating in accordance with the values that underpin this Code and the principles of public life.
- 4 **Inclusion and Diversity** - The governing body promotes a culture which supports inclusivity and diversity across the provider, including the composition of the governing body. This includes ensuring underrepresentation and differences in outcomes are challenged and where practicable corrective action is taken.
- 5 **Effectiveness** - the governing body ensures that governance structures and processes are robust, effective and agile, by scrutinising and evaluating governance performance against recognised standards of good practice.
- 6 **Engagement** - Governing bodies understand the various stakeholders of the provider (globally, nationally and locally) and are assured that appropriate and meaningful engagement takes place to allow stakeholder views to be considered and reflected in relevant decision-making processes.

## Element 1 Accountability

The governing body is unambiguously and collectively accountable for institutional activities, taking all final decisions on matters of fundamental concern within its remit.

- 1.1 The governing body has overall responsibility for all decisions that might have significant reputational or implications for the providers sustainability (including partnerships or collaborations). It therefore needs assurance that the provider:
  - a) Meets all legal and regulatory requirements imposed on it as a corporate body
  - b) Complies with its instruments of governance such as statutes, ordinances and articles
  - c) Meets the requirements falling upon the provider in respect of public funding issued by funding bodies.
- 1.2 The regulatory and legal requirements will vary depending on the constitution of individual HEPs, but, for most governing bodies, members are charitable trustees and must comply with legislation governing charities and case law in the exercise of their duties. Some institutions are constituted as companies, and governing body members are normally the company's directors; the primary legislation in this case will be the requirements of the Companies Acts.
- 1.3 In both instances members must discharge their duties in line with the accepted standards of behaviour in public life and the values in this Code, accepting individual and collective responsibility for the affairs of the provider.
- 1.4 All members of the governing body (including student and staff members) share the same legal responsibilities and obligations as other members, so no one can be routinely excluded from discussions. All members have a duty to record and declare any conflicts of interest.
- 1.5 Governing bodies must, as far as practicable, conduct their affairs in an open and transparent manner. This includes publishing information on the use of public funding, value for money and other performance information on their websites as well as any other information that supports regulatory compliance and accountability to all stakeholders.
- 1.6 There needs to be a clear separation of roles and responsibilities between the executive and the governing body with delegated authorities to the Head of Institution and any Committees that exist.

## Element 2 Sustainability

Working with the executive, the governing body sets the mission and strategic direction of the institution. It receives assurance that delivery of the strategic plan is in line with legislative and regulatory requirements, institution values and wider institutional policies and procedures and that effective systems of control and risk management are in place.

- 2.1 The governing body is responsible for the mission, character and reputation of the institution and therefore sets the values and standards that underpin the provider's strategy and operation.
- 2.2 The governing body has to be engaged in development of the providers strategy and it will formally approve or endorse the strategic plan in accordance with its constitution and the expectation of stakeholders. It will need assurance that the strategic plan is supported by plans or sub strategies that ensure that there are:
  - Enough financial and physical resources to support the providers aims and objectives, ensure effective delivery and meet any regulatory or funding commitments including the need to demonstrate value for money;
  - Sufficient and appropriate human resources in place to support the business plan;
  - Effective arrangements for the management of information which meets both GDPR and Freedom of Information requirements;
  - Arrangements in place to ensure that all forms of resources are used in a sustainable and effective manner.
- 2.3 The governing body will need to receive regular, reliable, timely and adequate information to monitor and evaluate performance against the strategic plan. The governing body's role is to have oversight of, and be able to constructively challenge performance, encourage quality enhancement, maintain standards, celebrate achievements and learn from difficulties.
- 2.4 The governing body needs to understand the external environment and, along with the executive, identify, understand and manage, strategic risks and opportunities for the provider.
- 2.5 Effective remuneration of all staff, especially the Vice-Chancellor and his/her immediate team, is an important part of ensuring institutional sustainability and protecting institution reputation. The governing body should confirm assurance on the extent of the providers compliance with The Higher Education Senior Staff Remuneration Code (published June 2018 by the CUC), and in particular ensure that no one is responsible for determining or influencing their own remuneration.

- 2.6 Depending on the constitution documents, regulatory requirement of the institution, some governing bodies will be required to establish a Remuneration Committee to consider and determine, as a minimum, the emoluments of the Vice- Chancellor and other senior staff as prescribed in constitutional documents or by the governing body.
- 2.7 All providers will have external auditors and unless exempt under the Companies Act 2006 because of their small size will usually have access to an internal audit function. The appointment and work of auditors will usually be overseen by an Audit Committee, comprising members that have no executive responsibility (although members of the executive may attend by invitation). Further guidance on the role of Audit Committees is published separately by CUC and governing bodies should assess the extent to which they comply with that guidance.
- 2.8 The governing body will consider and, where necessary, act on, an annual audit report and approve the audited annual financial statements.
- 2.9 The governing body must receive assurance that academic governance is robust and effective. Governing bodies also need to provide assurance on academic standards, the integrity of academic qualifications and will work with the Senate/Academic Board or equivalent as specified in its governing instruments to maintain standards and continuously improve quality. Governing bodies will also wish to receive assurance that specific academic risks (such as those involving partnerships and collaboration, recruitment and retention, data provision, quality assurance and research integrity) are being effectively managed.
- 2.10 The governing body must understand and respect the principle of academic freedom, the ability within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges. The governing body must understand its responsibility to maintain and protect the principle of academic freedom as enshrined in freedom of speech legislation.
- 2.11 The governing body needs assurance that:
- the institution is meeting the conditions of funding as set by regulatory and funding bodies and other major institutional funders. These include:
    - the need to use funds in line with the principles of regularity, propriety and value for money;
    - having robust systems of financial control and governance in place;
    - having assurance on social, financial and environmental objectives e.g. those which support a sustainable environment, widening access and participation and civic engagement.
  - the provider has considered and taken appropriate actions to mitigate the impact of any risks to its students' continuation of study e.g. the closure of a course, campus or location, the discontinuation of a discipline;

- there is an effective and proactive system of risk management in place and risks are rigorously assessed, understood and effectively managed across the organisation;
- high quality and robust data is produced and managed to meet relevant legal and regulatory requirements including GDPR;
- effective control and due diligence take places in relation to institutionally significant external activities e.g. commercial transactions, collaborations with HEPs in other countries. For those providers that are charities, assurance will be needed that commercial transactions conform to the requirements of charity law and regulation. This is particularly the case where institutions have established subsidiary entities, for example separate operating companies or charitable trusts.

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## Element 3 Reputation

The governing body safeguards and promotes institutional reputation and autonomy by operating in accordance with the values that underpin this Code and the principles of public life.

- 3.1 Members of governing bodies must always act ethically in line with the principles of public life (the Nolan principles) and the Providers own ethical framework, and in the interests of the provider, its students and other stakeholders. This applies whether the board members are elected, nominated or appointed. If a governing body member falls short of these standards, they must be dealt with in accordance with the provider's constitution and code of conduct. They must not be ignored.
- 3.2 Members of governing bodies need to act, and be perceived to act, impartially, and not be influenced by social or business relationships. Providers must maintain, check and publish a register of the interests of members and senior executives. A member who has a pecuniary, family or other personal interest in any matter under discussion and which may be seen to conflict with the best interest of the university **must also disclose the interest in advance of any discussion on the topic**. A member does not necessarily have a pecuniary interest merely because he/she is a member of staff or a student.
- 3.3 The governing body must ensure that its decision-making processes are free of any undue pressures from external interest groups, including donors, alumni, corporate sponsors and political interest groups.
- 3.4 If an individual member of the governing body has a view that is not consistent with the collective view of the governing body, they should abide by the principle of collective decision making and avoid putting specific interests or personal views before those of the institution. Individually they must not make any agreement for which they do not have authority. Breaches will be taken very seriously and will be dealt with in accordance with the provider's Code of Conduct.
- 3.5 Promoting trust in providers governing bodies requires assurances that there is effective communication with relevant stakeholders, including the reporting of significant changes in circumstances.
- 3.6 Legislation requires that the governing body must take practical steps to ensure that the students' union or association operates in a fair, democratic, accountable and financially sustainable manner. This requirement is in addition to corporate and charity legislation to which many student organisations are independently subject.

- 3.7 The governing body requires assurance that there is a transparent, effective and published process for making and handling a complaint or raising concerns and that any internal or external complaints or concerns are handled impartially constructively and in accordance with any requirements of the Office of the Independent Adjudicator for Higher Education.
- 3.8 If a governing body decides it is appropriate to remunerate governing body members, it must ensure payments are commensurate with the duties carried out, reported in the audited financial statements, have considered charity and employment law and reflect the Institution's values and ethos.

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## Element 4 Inclusion and Diversity

The governing body promotes a culture which supports inclusivity and diversity across the provider, including the governing body's own operation. Diversity, in this context, does not just mean protected characteristics – it includes a diversity of voice, attitude and experience. It is a means of ensuring under-representation and differences in outcomes are challenged and where practicable corrective action is taken.

- 4.1 HE providers are required by law to comply with equality and diversity legislation, and governing bodies are legally responsible for ensuring the HEI's compliance. Legislation in this area does not distinguish between domestic and international students and staff.
- 4.2 The governing body must ensure that there are arrangements in place to:
  - eliminate unlawful discrimination, harassment and victimisation;
  - advance equality of opportunity between people who do and do not share a protected characteristic; and
  - foster good relations between people who share and those who do not share a protected characteristic.
- 4.3 Governing bodies need to review and report on the provider's approach to equality and diversity. As a minimum, they must receive an annual equality monitoring report setting out work done by the provider during the year, identifying the achievement of agreed objectives, and summarising data on equality and diversity that they are required to produce and publish. For most providers this report will include an Equality Impact Assessment and proposals for widening participation in, and increasing access to, Higher Education. It should also normally include consideration of any significant differential educational outcomes by protected groups.
- 4.4 The governing body must routinely reflect on its own composition and consider ways it can encourage diversity in all its forms. This includes consideration of the impact of decisions on equality, diversity and inclusion.

## Element 5 Effectiveness

The governing body ensures that governance structures and processes are robust, effective and agile, by scrutinising and evaluating governance performance against recognised standards of good practice.

- 5.1 The Secretary (or Clerk) is responsible to the governing body for the provision of operational and legal advice in relation to compliance with governing instruments, including standing orders. They are also responsible for ensuring information provided to the governing body is timely, appropriate and enables informed decision making. The Secretary has a duty to keep governing body members briefed in respect of all relevant developments in governance and accountability. All members of the governing body should have independent access to the advice and services of the Secretary who must ensure that governing body members are fully aware of the appropriate rules, regulations and procedures. The Secretary should be senior enough to ensure the governing body and the executive has and acts in a way which is compliant with the Provider's regulations, and independent enough to provide challenge when this is not the case.
- 5.2 The governing body needs the appropriate balance of skills, experience, diverse backgrounds/ independence and knowledge to make informed decisions. Some constitutional documents specify governing bodies must include staff and student members.
- 5.3 The size and composition of the governing body needs to reflect the nature, scale and complexity of the provider and governing bodies need enough time and resources to function efficiently and effectively.
- 5.4 An effective governing body will have a culture where all members are able to question intelligently, debate constructively, challenge rigorously, decide dispassionately and be sensitive to the views of others both inside and outside governing body meetings.
- 5.5 An effective governing body will also ensure the Board culture reflects the values of the organisation and aligns with the articulated values of the culture of the Provider. It will also get assurance that the behaviours prevalent in the Provider are consistent with the values of the Provider.
- 5.6 The governing body will need to focus on strategic risks and emerging opportunities for the provider and have enough flexibility to respond to these quickly and effectively.

- 5.7 The governing body will need a suitable arrangement for the continuation of business in the absence of the Chair. Arrangements for a Deputy Chair may be codified within the Institution's governing instruments; if not, the Nominations Committee or equivalent can advise the governing body.
- 5.8 The governing body should also consider whether it is beneficial to appoint a Senior Independent Director (SID). Their role is seen in other sectors as an important aid to good governance; to help advise the Chair, to be an intermediary for other board members and to help facilitate an annual appraisal of the Chair. The role of the SID is different to the Deputy Chair, who should be part of the leadership of the Board; to deputise for the Chair and to take on specific duties which are assigned to them. The SID should be a voice and a sounding board for other governors to sense check the effectiveness of the governance arrangements, and to formally lead the appraisal of the Chair (and the Deputy Chair).
- 5.9 The governing body needs a formal process to ensure that governing body members are 'fit and proper' persons. The governing body also needs the power and process to remove any of its members from office and must do so if a member breaches the terms of their appointment.
- 5.10 A nominations committee (or similar) is an effective way to advise a governing body on the appointment of new members. The nominations committee can provide advice to the governing body on terms of office, the perceived skills balance required on the governing body, succession planning and skills refreshment. Normally final decisions on appointment are taken by the governing body.
- 5.11 In making decisions about terms of office the governing body needs to ensure there is a planned and progressive refreshing of membership. To facilitate this, and in line with other Codes of Governance, the CUC recommends terms of office should not be more than 9 years (either 2 of 4 or 3 of 3) unless there is good justification.
- 5.12 Governing body members need induction, updates and development which supports understanding of their role and changes in their operating environment.
- 5.13 A regular, full and robust review of governance effectiveness with some degree of independent input provides assurance to internal and external stakeholders and allows a mechanism to focus on improvement and chart progress towards achieving any outstanding actions arising from the last effectiveness reviews.

## Element 6 Engagement

Governing bodies understand the various stakeholders of the provider (globally, nationally and locally) and are assured that appropriate and meaningful engagement takes place to allow stakeholder views to be considered and reflected in relevant decision-making processes.

- 6.1 The governing body needs to ensure the activities of the provider are in the interests of students and other stakeholders and any donations, partnerships and similar activities do not inappropriately influence the provider's independence, mission or academic integrity. All students should have opportunities to engage with the governance of the provider.
- 6.2 The governing body needs assurance that there is regular effective two-way communication with students and relevant stakeholders and that they are advised on any major issues arising.
- 6.3 The governing body must promote and ensure the, social and economic, impact of the Institution, and its successes are reported to stakeholders. The governing body must also advise relevant stakeholders on any material changes, adverse or other, in policy or circumstance.
- 6.4 Governing bodies need to promote a collegiate, collaborative and cooperative approach to liaison with students and other stakeholders and ensure that interactions are guided by the values, ethics and culture of the provider.
- 6.5 Where providers enter into partnership working governing bodies require assurance on the benefits and risks of the partnership and need to be satisfied that there are effective governance arrangements, and risk management strategies in place to support the partnership.
- 6.6 Governing bodies should ensure the provider is accessible to and relevant to its local communities and should be open to, and engage with, their local communities.

# Appendix 1: Nolan Principles of Public Life

The principles have been taken from the [government website](#) and are the basis of the ethical standards expected of public office holders.

1. **Selflessness:** Holders of public office should act solely in terms of the public interest.
2. **Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
3. **Objectivity:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. **Accountability:** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
5. **Openness:** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. **Honesty:** Holders of public office should be truthful.
7. **Leadership:** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## Appendix 2: Statement of Primary Responsibilities

The principal responsibilities of the governing body should be set out in its Statement of Primary Responsibilities, which must be consistent with the institution's constitution. While there may be some variations because of different constitutional provisions, the principal responsibilities are likely to be as follows:

1. To set, and agree, the mission, strategic vision and values of the institution, with the executive.
2. To agree long-term academic and business plans and key performance indicators and ensure that these meet the interests of stakeholders.
3. To ensure that processes are in place to monitor and evaluate the performance and effectiveness of the institution against the strategy and plans and approved key performance indicators, which should be – where possible and appropriate – benchmarked against other comparable institutions.
4. To delegate authority to the head of the institution, as chief executive, for the academic, corporate, financial, estate and human resource management of the institution. And to establish and keep under regular review the policies, procedures and limits within such management functions as shall be undertaken by and under the authority of the head of the institution.
5. To ensure the establishment and monitoring of systems of control and accountability, including financial and operational controls, risk assessment, value for money arrangements and procedures for handling internal grievances and for managing conflicts of interest.
6. To establish processes to monitor and evaluate the performance and effectiveness of the governing body itself.
7. To conduct its business in accordance with best practice in HE corporate governance and with the principles of public life drawn up by the Committee on Standards in Public Life.
8. To safeguard the good name and values of the institution.

9. To appoint the head of the institution as chief executive, and to put in place suitable arrangements for monitoring his/her performance.
10. To appoint a Secretary to the governing body and to ensure that, if the person appointed has managerial responsibilities in the institution, there is an appropriate separation in the lines of accountability.
11. To be the employing authority for all staff in the institution and to be responsible for establishing a human resources strategy.
12. To be the principal financial and business authority of the institution, to ensure that proper books of account are kept, to approve the annual budget and financial statements, and to have overall responsibility for the institution's assets, property and estate.
13. To be the institution's legal authority and, as such, to ensure systems are in place for meeting all the institution's legal obligations, including those arising from contracts and other legal commitments made in the institution's name. This includes responsibilities for Health, Safety and Security as Equality, Diversity and Inclusion.
14. To receive assurance that adequate provision has been made for the general welfare of students.
15. To act as trustee for any property, legacy, endowment, bequest or gift in support of the work and welfare of the institution.
16. To ensure that the institution's constitution is always followed, and that appropriate advice is available to enable this to happen.
17. To promote a culture which supports inclusivity and diversity across the institution
18. To maintain and protect the principle of academic freedom as enshrined in freedom of speech legislation.
19. To ensure that all students have opportunities to engage with the governance of the institution

## **Glossary**

- *Clerk* used interchangeably with *Secretary*.
- *HEPs* are Higher Education Providers. This is used interchangeably for Universities and Higher Education Institutions.

- *external members* for all non-executive governing body members from outside the institution irrespective of how they are appointed.
- *governing body* which in some HEPs is called the Council, Court or Board of Governors. It may also be the Board of Directors or equivalent.
- head of institution meaning the Vice-Chancellor, Principal or equivalent.
- *stakeholders*: These are staff, existing and prospective students, funders, regulators, suppliers, local communities, alumni.

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