CUC Consultation:
Higher Education Code of Governance

Of interest to

- Chairs and members of higher education institution governing bodies
- Vice-Chancellors
- Registrars/Secretaries/Clerks
- Wider sector stakeholders and representative bodies.

Consultation notes

This document provides CUC members, their governing bodies and institutions, and sector stakeholders with the draft Higher Education Code of Governance (the Code) which has been developed to supersede the current Governance Code of Practice and General Principles¹.

Good governance flourishes where it has the commitment of all those involved in the sector, the CUC are therefore consulting widely on this draft version of the Code and we would welcome comments on its content and style via the web form². The web form also allows for document with pre-prepared comments or tracked changes version of this document to be uploaded.

This document includes the draft:
- covering letter intended to accompany the Code; and

In due course, and with support from UUK and AHUA we will also provide additional guidance which supports the final version of the Code; this is not included as part of this consultation.

Timeline

Responses should be made via the web form² by noon on 18 April 2014 (note extended from the original 31 March deadline).

Contact

In case of queries about the consultation or the draft Code please contact

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¹ The current Code is available from http://goo.gl/iKk9xW
² See http://goo.gl/Yki5z1
Draft Covering Letter

I'm pleased to enclose a copy of a draft revised Higher Education (HE) Code of Governance (the Code) which updates the first one produced by the Committee of University Chairs (CUC) in 2004. As in previous versions the Code is designed to support governing bodies to meet and exceed the basic requirements contained within governing instruments and relevant legal and regulatory requirements which are, so far as is possible, not repeated in the code itself.

The UK higher education (HE) system is amongst the best in the world and has a central role in continued national economic development. It is primarily concerned with teaching, learning, research, knowledge transfer and the development of the potential of its students, both for their own sake and to serve the needs of society and the economy. It also plays a major role in shaping a democratic, sustainable and inclusive society. These distinct purposes inevitably impact on its governance structures and practices, including in the need to engage both staff and students in the governance of their institution and a clear recognition of the importance of public benefit, the acknowledgment of which is the foundation of the exempt charity status enjoyed by most institutions.

Compared with many countries in the world, UK higher education institutions (HEIs) have traditionally enjoyed an exceptional degree of autonomy and this is a cornerstone of the system and at the heart of the success of the sector in the UK. It will continue to be of the highest importance as HE continues to develop. Effective governance contributes substantially to HE in numerous ways including by:

i. underpinning the institutional success on which international reputation is based;
ii. providing assurance to government, the funding bodies and lenders about institutional probity and sustainability; and
iii. demonstrating leadership through effective governance to ensure that institutions respond to the numerous challenges facing them in the competitive HE market place.

Whilst members of the CUC will recognise many of the provisions of the Code from previous versions, stylistically the revised code is substantially different and it is now much more concise in its expectations taking the form of numbered points rather than narrative text. This is designed to make the Code more accessible to members of governing bodies and stakeholders by shining a spotlight on the high standards of governance already practised and widely evidenced.

By being more accessible we believe the Code will further enable the thousands of governing body members (mostly external and independent of the institutions they serve) who give their time freely to support HE to effectively reflect on, and develop, their own institutional practices. Through this continuous enhancement, as a sector we further demonstrate the effectiveness of autonomous governance.

Governance is not a static concept and this is reflected by the consideration of ethics, equality and diversity, and academic governance as key values in this revised version. Dynamic expectations of governance mean the new Code should not be seen as supporting a 'tick box' approach and governing bodies of HEIs are encouraged to adopt the 'spirit' of the new Code as well as its 'letter'.

The sector has traditionally excelled at adapting to legislative and regulatory requirements which have a propensity to increase over time. Indeed beyond the institution, HEIs and their governing bodies are accountable in multiple ways including to:
i. funding bodies (including HEFCE, SFC, HEFCW, DELNI, SLC and Research Councils) in terms of both public funding and other regulatory requirements

ii. wider stakeholders (including staff, students, other beneficiaries of the HEI as a charity, and the community as a whole); and

iii. shareholders for some alternative providers.

By adopting the provisions of the Code governing bodies can demonstrate leadership and stewardship in relation to the governance of their own institutions, the protection of institutional reputation, and give confidence to key stakeholders and partners, the student community, and society at large. In the light of a continuing trend of and for transparency and “consumer” protection I cannot stress enough the importance of proactively providing this assurance in contributing to the safeguarding of the sector from further legislative or regulatory creep. We see the Code as a vital defender of autonomy and a bulwark against external interference and over regulation.

Notwithstanding the substantial competition that exists in the sector there is also a strong mutual interest in governing bodies of UK HEIs working together to support collective reputation, and effective inter-institutional collaboration has been an important and valued part of UK HE to which governing bodies have contributed. In this sense the reputation of UK HE is collective, and any failures of governance at one institution would reflect on all others.

In the ten years since the first Code was produced there have been numerous changes to the governance and management of HE, and to the regulatory environment in which it operates. For example, while England, Wales and Northern Ireland use the existing Code, Scotland has produced its own (the Scottish Code of Good Higher Education Governance) and its adoption is a condition of funding. Without prejudice to such developments, this new Code has been designed to support governing bodies across the United Kingdom, and the separate illustrative practice on the CUC web site will be useful to all UK institutions. An additional development in the last ten years has been the growth of alternative HE providers and an expansion of HE in further education, and both sectors are encouraged to adopt the Code where appropriate.

Yours sincerely,

Nicholas Montagu
The Higher Education Code of Governance

Produced by the Committee of University Chairs

Draft for Consultation

24th February 2014
Introduction

Good governance is at the heart of the higher education (HE) sector in the UK, and will continue to be of the highest importance as HE continues to develop. To support governors this HE Code of Governance has been developed after wide consultation with all of the appropriate stakeholders within higher education. Its primary audience is the governing bodies of higher education institutions (HEIs), and its purpose is to identify the key values and practices on which the effective governance of UK HEIs is based in order to help deliver institutional mission and success. By adopting the Code governing bodies demonstrate leadership and stewardship in relation to the governance of their own institutions’, protect institutional reputation, and ensure appropriate assurance to key stakeholders and partners, the student community, and society at large. The Code needs to be read alongside the governing instruments of HEIs and relevant legal and regulatory requirements which are not repeated in the Code itself.

The Code

The Code is in three parts:

1. An initial statement of the core values providing the basis for the way that HE governance is conducted.

2. Ten key governance elements which support the values are identified along with associated statements. The word 'must' is used to indicate those statements where compliance is needed to meet explicit legal or regulatory requirements (including those in the financial memorandum of the funding bodies) or that are usually so fundamental to good governance that liability issues might be raised if they were ignored. Alternatively, the word 'should' is used to indicate those statements where a 'comply or explain' approach operates, and where a governing body can adopt different practice from that suggested in the Code and report thereon in the annual corporate governance statement. This allows flexibility in applying good governance in a wide range of diverse institutions.

3. The provision of further information to support the values and key elements, the main source for which is the website of the Committee of University Chairs. This information is entirely for institutional guidance and there is no requirement for institutions to adopt it. Words highlighted in orange in the electronic version of this Code have hyperlinks to such material [Note: hyperlinks and further information is not part of the consultation]. Appendix B provides a short summary of key further information sources.

The new Code uses the following standard terms: the 'governing body' (which in some HEIs is called the council, court or board of governors); the 'head of institution' for the vice-chancellor, principal or equivalent; and 'external' members for all (non-executive) governing body members from outside the institution irrespective of how they are appointed.

Effective governing body disclosure on how this Code is implemented is a crucial part of its use. It should be included in the overall reporting of corporate governance, which should make information available in an accessible form to the institution as a whole and the broader community it serves.

As governance is in a period of substantial change this Code itself will be reviewed regularly to ensure that it remains fit for purpose; this will take place, normally, every three years.
The Core Values of Higher Education Governance

High quality HE which commands public confidence and protects the reputation of the UK HE system must rest on a number of shared values. By implementing such values the governing body: provides the foundations for its own effectiveness; supports institutional autonomy; helps to maintain the cultural legacy and reputation of HEIs; and by example demonstrates leadership. A failure to adopt and implement agreed values in the practice of governance has implications beyond the institution concerned, by potentially undermining the collective reputation of UK HEIs.

In setting out core values, this Code adopts and builds on the 'Nolan Principles of Public Life', which provide an ethical framework for the personal behaviour of governors. They are:

- Selflessness.
- Integrity.
- Objectivity.
- Accountability.
- Openness.
- Honesty.
- Leadership.

In addition, given the specific nature of HE, this Code is also based on the following expectations which illustrate the values and beliefs which it is hoped that governing bodies will adopt:

- An acceptance of protecting the student interest through good governance.
- A commitment to academic freedom and to research, scholarship and teaching of high quality.
- A recognition of the autonomy of HEIs as the best guarantee of quality and international reputation.
- A commitment to the publication of accurate and transparent information about HEIs that is publicly accessible.
- A recognition that accountability for funding derived directly from stakeholders requires HEIs to be clear that they are in a contract with stakeholders who pay for their service and expect clarity about what is received or expected.
- A commitment to the achievement of equality of opportunity and diversity throughout the institution.
- An acceptance of the importance of access and widening participation so that HE is not limited only to those who can afford it.
- A commitment to full and transparent accountability for public funding.
Building on these values this Code is based on the following ten key elements of HE governance:

1. The governing body must be unambiguously and collectively accountable for institutional activities, taking all final decisions on matters of fundamental concern.

2. The governing body must protect institutional reputation by ensuring clear ethical standards, policies and procedures are in place.

3. The governing body must ensure institutional sustainability by setting and ensuring the successful delivery of institutional mission and strategy.

4. The governing body must ensure the effective operation of academic governance - involving the senate/academic board or equivalent as specified in its governing instruments - in order to maintain quality and ensure that the interests of students are at the heart of governance.

5. The governing body must ensure institutional financial health including by adopting effective systems of control and risk management which promote value for money, meet mandatory audit requirements, and produce accurate and quality assured institutional data.

6. The governing body must ensure that effective control and due diligence takes place in relation to external activities, including internationalisation, partnerships and collaborations, commercialisation, and fund raising.

7. The governing body must promote equality and diversity throughout the institution, and it has a particular responsibility in relation to its own operation.

8. The governing body must ensure that governance structures and processes are fit for purpose, meet recognised standards of good practice, and adopt clear definitions of the roles of the chair, the head of institution and the secretary.

9. The governing body must ensure its size, membership and associated skills are fit for purpose with external members forming a majority, and must be such as to ensure institutional and stakeholder confidence.

10. The governing body must review regularly its effectiveness and that of any committees in its sub-structure.
1: The governing body must be unambiguously and collectively accountable for institutional activities, taking all final decisions on matters of fundamental concern.

1.1. The diversity of UK HE means that institutions have different governing instruments that the governing body must understand and implement. The provisions of this Code need to be read alongside such instruments.

1.2. Where governing instruments are no longer fit for purpose institutions should amend them where practicable and having obtained the necessary approval from regulators.

1.3. The governing body must ensure that it has oversight of all matters which might have significant reputational or financial implications (including partnerships, collaborations and overseas ventures). It must also ensure that these are only approved after a rigorous process of due diligence and risk evaluation.

1.4. The governing body must ensure that the institution meets all legal and regulatory requirements imposed on it as a corporate body, and institutional compliance should be kept under regular review.

1.5. The main accountability requirements falling upon the governing body in receipt of public funding are set out in the financial memorandum issued by the funding bodies as a condition for the receipt of public funds.

1.6. Each governing body must adopt a statement of primary responsibilities which should be published widely and be known to all governors. The statement should be supported by an accompanying schedule of delegation which should set out how each responsibility is met and by whom, including those items which the governing body delegates to the head of institution.

1.7. There should be clear lines of accountability between the head of institution and the executive who are responsible for management and the governing body which has responsibility for governance.

1.8. Members of governing bodies must comply with the relevant legislation governing their legal form of incorporation. For most governing bodies members are charitable trustees, and as such they must comply with charities legislation and case law. Where institutions are constituted as companies members are normally the company’s directors and must meet the requirements of the Companies Acts. In both cases members are required to discharge their duties with prudence (including ensuring financial solvency) and care, ultimately accepting individual and collective responsibility for the affairs of the institution.

1.9. In undertaking its collective accountability the governing body should conduct its affairs in as open and transparent a manner as possible. The general principles and requirements of the Freedom of Information Act must apply so that students and staff of the institution should have access to all appropriate information about the proceedings of the governing body.

1.10. Public reporting and disclosure on governance is important and contributes to public confidence in HE. An institution’s annual report and audited financial statements should be made widely available both inside and outside the institution (including being published on the web).

1.11. The annual report should include a corporate governance statement which sets out the institution’s governance arrangements (including the extent to which it has adopted this Code) and its policies on public disclosure.
2 The governing body must protect institutional reputation by ensuring clear ethical standards, policies and procedures are in place.

2.1. The governing body must ensure the highest standards of ethical behaviour among its members who must avoid conflicts of interest and act solely in the interests of the institution at all times. As such members of Governing bodies must act and be perceived to act impartially, and not be influenced by social or business relationships. A member who has a pecuniary, family or other personal interest in any matter under discussion must disclose the interest. A member does not necessarily have a pecuniary interest merely because he/she is a member of staff or a student.

2.2. Members whose views are not consistent with the decisions of the governing body should abide by the principle of collective decision making and avoid putting specific interests before those of the institution.

2.3. In supporting academic freedom, the governing body should ensure the highest standards of ethics in the conduct of academic affairs. Some aspects of research governance raise particular sensitivities (e.g. animal experimentation) and well established codes of practice exist where compliance is required.

2.4. 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.

2.5. The governing body should approve and review the implementation of a policy on ethics and reputational risk which should apply throughout the institution.

2.6. When acting in an ambassadorial role outside the institution, governors should at all times behave ethically, and not make any agreement for which they do not have authority.

2.7. The governing body should ensure the publication by the institution of accurate and honest information about its activities which avoid false or exaggerated claims. This is particularly important in relation to information for prospective students.

2.8. The governing body should ensure that an agreed policy exists on 'whistleblowing' which conforms to legal requirements, and that the associated protocols are widely known within the institution.
3 The governing body must ensure institutional sustainability by setting and ensuring the successful delivery of institutional mission and strategy.

3.1. The governing body must be responsible for the mission and character of the institution at a strategic level, and there is an obligation on governors to be adequately informed in order to carry out this key responsibility.

3.2. The strategic plan plays a crucial role in ensuring the successful performance of the institution, and the governing body must formally approve it ensuring that it is realistic, supported by, and aligned to, the financial strategy, and demonstrate commitment to its achievement. The governing body should require the head of the institution to provide strategic advice and guidance on the mission and strategic development of the institution.

3.3. In order to assess the appropriateness of the strategic plan and review its implementation, the governing body must be clear how institutional performance is measured, and identify what key performance indicators (KPIs) and other performance measures are to be adopted within a risk based framework. In doing so it should take advice from the head of institution and other relevant sources, whilst being clear that the adoption of agreed KPIs is a governing body responsibility. It must rigorously assess all aspects of the sustainability of the institution using an appropriate range of mechanisms which include relevant KPIs on financial health, teaching and learning, research (where relevant), and the student experience.

3.4. In ensuring sustainability the governing body must be in a position to explain the processes and the types of evidence used and provide any assurances required by funders. Where such assessments indicate serious issues which could affect future sustainability the governing body must undertake appropriate remedial action.

3.5. In addition to the main strategic plan the governing body should consider, approve, review and ensure the consistency of a wide number of sub-strategies that will affect the delivery of the institutions overarching strategy and maintain its reputation. This will vary according to type of institution but might, for example, include the widening participation strategy, financial and other resource strategies, and internationalisation strategy.

3.6. The governing body should ensure that the needs and interests of students and society are adequately reflected in the strategic plan, for example in relation to student satisfaction, student experience, supporting graduate employment and producing good citizens.

3.7. The governing body should promote sustainability in all aspects of the HEI, including teaching, research and knowledge exchange, and by involving students.

3.8. As a contribution to its mission and public good, the governing body should have oversight of its approach to corporate and social responsibility. It should ensure appropriate policies, processes and reporting procedures are in place, for example that an annual report including appropriate benchmarks is produced.

3.9. The governing body should also approve an annual operating plan that identifies those aspects of the strategic plan being implemented in the year in question, and the resulting actions and results.
4: The governing body must ensure the effective operation of academic governance - involving the senate/academic board or equivalent as specified in its governing instruments - in order to maintain quality and ensure that the interests of students are at the heart of governance.

4.1. Academic governance is a shared activity with the senate/academic board (or equivalent) and the governing body should be clear about its responsibilities in this area. The governing bodies of post-1992 institutions have an explicit responsibility for “determining educational character”.

4.2. The governing body should understand and respect the principle of academic freedom and its responsibility to maintain and protect it.

4.3. In approving the academic strategy and monitoring its achievement the governing body should adopt relevant performance measures that are credible to the academic community.

4.4. Sound academic governance should be built upon collegiality. It follows that the governing body should respect the role of the senate/academic board and other bodies involved in academic governance.

4.5. Students should be actively engaged in academic governance, and ways should be found to ensure that the ‘student voice’ is heard.

4.6. Ensuring a high quality student experience is a core governing body responsibility which it shares with the wider institutional community.

4.7. The governing body should ensure the provision of honest, accurate and timely information to students and the public about all aspects of academic provision.

4.8. The governing body must ensure that the welfare and wellbeing of students is secured, that student complaints are effectively addressed, and that summary reports are produced and considered (at least annually) on student complaints and appeals taking into account, where appropriate, the requirements of the Office of the Independent Adjudicator.

4.9. As part of its overall responsibility for risk management, the governing body should ensure risk management includes academic risks such as those involving partnerships and collaboration, recruitment and retention, data provision, quality assurance, and research integrity. It should have oversight of all major academic partnerships involving significant risk.

4.10. Many institutions are active in a range of international academic activities, and where this is the case the governing body should adopt and regularly review its internationalisation strategy.

4.11. Legislation requires that the governing body must take practical steps to ensure that the students’ union operates in a fair, democratic, accountable and sustainable manner.

4.12. The governing body must ensure that reasonably practicable steps are taken to ensure freedom of speech within the law for students and members of staff and for visiting speakers.

4.13. The governing body should ensure that the effectiveness of academic governance is kept under regular review.
5 The governing body must ensure institutional financial health including by adopting effective systems of control and risk management which promote value for money, meet mandatory audit requirements, and produce accurate and quality assured institutional data.

Strategy

5.1. As part of its overall responsibility for the governance of financial affairs, the governing body must ensure the financial health and sustainability of the institution. It must therefore ensure it has a clear financial strategy, aligned to institutional strategy, which generates income through academic and other activities and constrains costs.

Financial Control and Risk

5.2. An essential element of financial management is the annual budget, and its approval must be a responsibility reserved for the collective decision of the governing body, without delegation.

5.3. The governing body must be cognisant of and meet the conditions of funding as set by the funding bodies and other funders which include the requirements of the financial memorandum. These include the need: to use public funds for proper purposes and achieve good value for money; have a sound system of risk management, control and governance; ensure the use of regular, reliable, timely and adequate information to monitor performance and track the use of public funds; and safeguard institutional sustainability.

5.4. The governing body must inform its funding body of any "material adverse" change in its circumstances and any serious incident which - in the judgement of the accountable officer and the governing body - could have a substantial impact on the interests of the institution.

5.5. Institutions must have financial regulations and procedures approved by the governing body which specify the financial responsibilities and authority of the governing body, its committees, and staff. There should be clear policies on a range of systems, including treasury management, investment management, debt management, and grants and contracts, and these should be periodically reviewed.

5.6. Day-to-day financial control should be exercised by officers of the institution under delegation from the governing body, and responsibility for financial management and advising on financial matters is generally delegated to the director of finance (or equivalent). That individual must have access to the head of the institution whenever he/she deems it appropriate.

5.7. The governing body should have confidence in the arrangements for the provision of accurate and timely financial information, and therefore also in the financial systems used to generate such information.

5.8. There is a range of pension provision in UK HE for staff. Members of the governing body must understand the arrangements of their own institution, and in particular whether they have an individual or collective role as a trustee or trustees of any pension fund. They must also understand the financial implications of their institution’s pension arrangements, and the full implications of actual or potential deficits and how best to report potential deficits on pension funds in the annual accounts. In institutions with their own pension schemes potential conflicts of interest between members acting as governors and as pension trustees should be avoided.

5.9. The governing body must ensure that a statement on internal controls explaining risk management arrangements operated by the governing body is contained in the corporate governance section of the audited financial statements.
**Audit**

5.10. The governing body must comply with mandatory requirements of the funding bodies relating to audit, as set out in the audit code of practice and should comply with the CUC Audit Committee Handbook. This includes: appointing the audit committee; considering and, where necessary, acting on the annual report from the audit committee; appointing the external auditors; considering the annual report of the internal audit service; and receiving and approving the audited annual financial statements (this responsibility should be reserved to the governing body for its collective decision, without delegation).

5.11. While responsibility for devising, developing and maintaining control systems lies with the executive, internal audit provides independent assurance to the governing body which should approve an annual audit plan.

5.12. The audit committee should be a small, well informed authoritative body which has the financial expertise and the time to examine risk management control and governance under delegation from the governing body. It should not confine itself to financial matters, and its role extends to all areas of institutional activity.

5.13. The audit committee must produce an annual report for the governing body, including: its opinion on the adequacy and effectiveness of the institution's risk management, control and governance arrangements; processes for promoting Value for Money through economy, efficiency and effectiveness; and (in institutions receiving funding body support) the management and quality assurance of data.

**Value for Money**

5.14. The governing body must promote the achievement of value for money (VfM) and ensure that a VfM strategy is in place and monitored. It should obtain assurances, for example from its Audit Committee, that appropriate policies and procedures are consistently applied, and that there is compliance with relevant legislation.

5.15. The institution’s procurement procedures should form part of the financial regulations, which should be approved by the governing body. This includes compliance with European law and procurement rules.

**Data**

5.16. The governing body must ensure that there are effective arrangements in place for the management and quality assurance of data. To do so the governing body should seek assurance from the audit committee about data quality.

5.17. Data submitted for funding purposes on behalf of the governing body must comply with directions published by the respective funding body and includes: annual accountability returns; any data requested by the Higher Education Statistics Agency (HESA); any information needed for the purpose of charity regulation; and other information the funding body may reasonably request to understand the institution’s risk status.
6 The governing body must ensure that effective control and due diligence takes place in relation to external activities, including internationalisation, partnerships and collaborations, commercialisation, and fund raising.

6.1 The governing body should ensure that particular scrutiny is exercised on external activities with significant potential financial or reputational risks. Where such activities involve commercial transactions care must be taken to ensure that arrangements conform to the requirements of charity law and regulation.

6.2 Internationalisation presents institutions with both opportunities and significant challenges, and the governing body should ensure that not only does it approve and monitor an international strategy, but also that the executive produces regular reports (at least annually) on the performance of all major international and strategic partnerships.

6.3 Many institutions have established subsidiary entities, for example separate operating companies or charitable trusts. In such cases the governing body should: ensure that the entity's board possesses the attributes necessary to provide proper stewardship and control; appoint some suitably qualified directors or trustees to its board who are not normally members of the governing body or staff/students of the institution; and ensure that the entity's board conducts business in accordance with a recognised and appropriate code of governance.

6.4 Where institutions are part of group structures (either subsidiaries of larger organisations or operating their own subsidiaries) the governing body should be clear about its responsibilities in relation to any other corporate governance arrangements and associated reporting.

6.5 In relation to partnerships and other forms of institutional collaboration the governing body should agree the authorisation requirements for approving such arrangements, including the circumstance where governing body approval is required.

6.6 Where institutions have established major strategic partnerships with institutional risks, for example foundations, development committees, friends groups, or similar mechanisms to support development, public engagement and fund raising, the governing body should be explicit about their role, and should retain unambiguous responsibility for approving and monitoring development and fund raising policy. This includes ensuring that fund raising, donations, corporate sponsored research and partnerships, and similar activities do not inappropriately influence institutional independence or academic mission.

6.7 The governing body should ensure that a clear institution wide policy exists on donations and fund raising, and that this identifies the processes for the scrutiny of proposed donations. These should include clear lines of responsibility and identify the individuals authorised to act on behalf of the institution in relation to fund raising and donations.
7 The governing body must promote equality and diversity throughout the institution, and it has a particular responsibility in relation to its own operation.

7.1. Through its own actions and behaviour the governing body should demonstrate its commitment to equality and diversity in all aspects of its affairs.

7.2. The governing body should approve and review the institution's equality and diversity strategy and adopt agreed indicators to measure the performance of the institution in implementing the strategy.

7.3. The governing body has a number of legal obligations in relation to equality and diversity which it must understand and comply with. These go much further than avoiding discrimination and require the active promotion of equality in a number of defined areas. The governing body must therefore ensure that agreed action plans to implement the equality and diversity strategy are progressed throughout the institution.

7.4. At a minimum the governing body should receive an annual equality monitoring report detailing work done by the institution during the year, identifying the achievement of agreed objectives, and summarising data on equality and diversity that institutions are required to produce (e.g. on staff recruitment and promotion).

7.5. The governing body should ensure a human resource management and employment strategy that takes into account equality and diversity is developed and monitored.

7.6. Specific equality and diversity responsibilities fall on the remuneration committee in respect of the determination of pay and other rewards, and the committee's report to the governing body should explain how its decisions take account of institutional equality and diversity policy.

7.7. The governing body and nominations committee should agree its own policy on equality and diversity in relation to appointing its members, and implementing this policy should involve adopting explicit approaches to member recruitment. Such a policy should have full regard to the implications of the institution's overall equal opportunity and diversity policy (including any measurable objectives that may be relevant).

7.8. It is important that the governing body reports fully on how it takes action on equality and diversity in the operation of governance, and therefore in the annual report it should include a description of its policy on diversity, including any measurable objectives that it has set, and outlining progress on implementation. For those institutions that produce a separate equality and diversity report that addresses such matters a simple cross reference would be sufficient.
8 The governing body must ensure that governance structures and processes are fit for purpose, meet recognised standards of good practice, and adopt clear definitions of the roles of the chair, the head of institution and the secretary.

8.1. The governing body should keep its structures and processes under regular review to ensure that they are fit for future purpose. Nothing in this Code should be taken as inhibiting innovation, providing that its provisions and spirit are met.

8.2. The full governing body should meet as often as is required to undertake its responsibilities, and not less than four times a year.

8.3. To function efficiently, the governing body must have rules for the conduct of its meetings.

8.4. Members should attend all meetings where possible. The governing body should establish the number and category of members which constitute a quorum, with external members always constituting a majority.

8.5. There should be a presumption of openness and engagement, with all matters open to discussion by the whole governing body. Occasionally there will be matters where specific governors should not be party to discussions. These should be dealt with either by conflict of interest declarations, or by enforcing agreed policy on the confidentiality of business.

8.6. It is common practice for the governing body to delegate some of its activities to committees and the chair, and in deciding which tasks or responsibilities should be delegated the governing body should agree a formal schedule of matters reserved to it for its collective decision. At a minimum this should include final decisions on corporate strategy; the review and approval of the institution’s annual revenue and capital budgets and cash forecasts together with its audited financial statements; and the appointment and (if necessary) dismissal of the head of institution or of the secretary to the governing body. The governing instruments of some institutions list key powers that the governing body may not delegate.

8.7. All committees should have a clear remit with written terms of reference that define responsibilities and authority, and that distinguish between issues on which they are empowered to take decisions and those that must be referred to the governing body for decision.

8.8. The governing body may also delegate authority to its chair, head of institution or other officers to act on its behalf. Such delegations must be clearly defined in writing and be formally approved by the governing body. Having delegated authority the governing body retains accountability for the actions taken.

8.9. There should be three governing body committees which play a central role in supporting the proper conduct of the governing body’s business: an audit committee (see paragraph 5.10), a nominations committee (see paragraph 9.1), and a remuneration committee.

8.10. The remuneration committee must determine and review the salaries, performance pay arrangements, and other employment terms and conditions (and, where appropriate, severance payments) of the head of institution and such other members of staff as the governing body deems appropriate. Its membership should be agreed by the whole governing body, which should also appoint a secretary and it should ensure that no member of the Committee is involved in determining their own remuneration. Annually, the committee should receive a report on the review the performance of the head of institution and recommend any performance payments. In doing so the committee must seek comparative information on salaries and other benefits and conditions of service in the HE sector and more broadly with the view of balancing the need to recruit and retain the very best staff in a competitive environment with the need to demonstrate the best use of stakeholders’ funding.
8.11. If considering senior staff severance arrangements the remuneration committee must avoid any perceived inappropriate use of funds.

8.12. The remuneration committee’s reports should provide sufficient detail of the criteria and policies against which recommendations have been made for the governing body to consider and - if agreed - formally adopt.

**The Chair**

8.13. The chair is responsible for the leadership of the governing body and ultimately to the stakeholders for its effectiveness. A chair should take particular care that the governing body observes the values of HE governance (as set out at the start of this Code).

8.14. The chair must be an external member of the governing body and as a non-executive should not be drawn into day-to-day management.

8.15. The chair should promote the effective and efficient operation of the governing body, and promote a culture of openness and debate by facilitating the effective contribution of all members - including through an annual review process - and ensuring that they work together effectively.

8.16. For the governing body to be effective, there should be a supportive and constructively challenging working relationship between the chair and the head of the institution and other senior officers.

8.17. The process and criteria by which a chair is appointed should be agreed by the whole governing body which should also confirm the appointment. The process should be undertaken by the nominations committee or a group established for the purpose.

8.18. There are variations of practice in the length of term for which the chair is normally appointed; however, re-appointment beyond two terms typically of three or four years, or the equivalent, should be regarded as exceptional. Such a period of office should exclude that serving in any other capacity on the governing body.

8.19. The chair should ensure that there is effective communication between the governing body and all its stakeholders both internal (staff and students) and external.

**Head of Institution**

8.20. The head of the institution - supported by a senior management team - must be responsible for the executive management of the institution and its day-to-day direction. He/she should not seek to determine matters reserved for the governing body.

8.21. The specific responsibilities of the head of the institution in relation to governing body business must include: ensuring that governing body decisions are implemented through the institution’s management structure; advising the governing body as required; and as the ‘accountable officer’ informing the governing body if any actions would be incompatible with the financial memorandum. (If the governing body nevertheless decides to proceed, then the head of institution must inform the chief executive of the relevant funding body.)

8.22. The appointment of a new head of institution is one of the most important decisions a governing body can take, and irrespective of the approaches used it must retain final accountability for the process. The full governing body should formally approve the criteria and process for the appointment of the head of institution.

8.23. The governing body should agree a process for the annual review of the performance of the head of institution. The outcomes of such reviews should be known both to the remuneration committee, and at least a summary should be provided to the whole governing body.
8.24. The remuneration committee must be responsible for determining the salary and conditions of service (and any severance payments) of the head of institution using policies and processes agreed by the governing body. The committee's reports on these matters should provide sufficient detail to enable the governing body to satisfy itself that decisions made have been compliant with its policies.

8.25. It is important that the governing body should provide both support and constructive challenge to the head of institution, and both parties should develop a sound working relationship for it to be effectively undertaken.

The Secretary to the Governing Body

8.26. The governing body must appoint its own secretary, agree the process for the review of his/her performance, and (if necessary) terminate the appointment by a decision of the whole governing body.

8.27. In carrying out the role the secretary should be solely responsible to the governing body and should therefore have a direct reporting link to its chair for the conduct of governing body business. The governing body must safeguard the secretary's ability to carry out his/her responsibilities.

8.28. The governing body should ensure that the secretary has adequate time and available resources to undertake the role effectively.

8.29. The secretary should be responsible for coordinating legal advice to the governing body and advice on all matters of procedure and its responsibilities.

8.30. The secretary must inform the governing body if he/she believes that any proposed action would exceed its powers or be contrary to legislation or the financial memorandum. (Note: the head of the institution must alert the governing body if any action is incompatible with the financial memorandum but this cannot absolve the secretary from having this responsibility as well.)

8.31. Where the function of secretary is combined with a senior management role care should be exercised in separating the two functions. Irrespective of other duties that the secretary may have, when dealing with governing body business he/she must act only on the instructions of the governing body. If there is a conflict of interest between the two roles it must be reported to the governing body.

8.32. The chair of the governing body, the head of the institution and the secretary should work closely together to expedite business, and the secretary should keep the head of the institution fully informed on any matter relating to governing body business. If this is not possible because of inappropriate conduct by one of the parties involved, the governing body must take action. The secretary must advise the chair in respect of any matters where conflict, potential or real, may occur between the governing body and the head of institution.
The governing body must ensure its size, membership and associated skills are fit for purpose with external members forming a majority, and must be such as to ensure institutional and stakeholder confidence.

9.1. In appointing new members the governing body must be advised by a nominations committee (or similarly titled), normally chaired by the chair of the governing body (except where a new chair is being considered). The committee’s membership must be agreed by the governing body and consist of a majority of external members.

9.2. A nominations committee should use rigorous and systematic processes agreed by the governing body for recruiting and retaining governors (including the chair), including written role descriptions and an analysis of the skills, experience and attributes required for membership.

9.3. Appointments of governing body members should be made on the basis of open competition and personal merit.

9.4. Members should individually and collectively have or acquire sufficient understanding of HE to be able to engage fully in the affairs of the governing body and implement the statement of primary responsibilities. The appointment of external members with direct senior experience of HE should be considered to provide such understanding.

9.5. The governing body must have a majority of external members, who are independent of the institution. They should question intelligently, debate constructively, challenge rigorously, decide dispassionately, and be sensitive to the views of others both inside and outside governing body meetings.

9.6. The governing body must contain staff and student members and should encourage their full and active participation.

9.7. All members should be able to allocate sufficient time to undertake their duties effectively, and the governing body should agree an indication of the time expected of its members.

9.8. All members should be appointed for a given term, which should be renewable subject to satisfactory performance. The renewal of appointment should not be automatic, and should be recommended by the nominations committee. External members should not normally serve for more than two terms of four years, or three terms of three years, except where subsequently undertaking a new and more senior role (for example as chair).

9.9. The governing body should satisfy itself that plans are in place for an orderly succession of its membership, so as to maintain an appropriate balance of skills and experience with the progressive refreshing of key roles.

9.10. Practice varies about whether some members of the executive team are full members of the governing body (although it is common for some of them to attend with observer status), but where this is the case they should accept the overall corporate responsibility of the governing body.

9.11. Members should receive a full induction on joining the governing body, and should regularly refresh their skills and knowledge through development activities funded by the institution.

9.12. The governing body must have the power to remove any of its members from office, and must do so if a member breaches the terms of his/her appointment.

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3 It is accepted that both Cambridge and Oxford and Universities do not have a legal requirement to be constituted in this manner and that the make-up of their respective governing bodies has been confirmed by the Higher Education Funding Council.
9.13. The governing body should be of sufficient size that its responsibilities can be effectively and speedily undertaken, without being so large that it becomes neither unwieldy nor too small. This should usually be within the range of 12-25 members, although there is no optimal governing body size, and total membership should depend on numerous factors including the nature and history of the HEI, the range of skills and experience required, and the number of internal members deemed necessary.

9.14. Governing bodies should consider formalising the role of a 'deputy chair', a role which - in addition to acting for the chair in his/her absence - can provide a sounding board for the chair, can act as an intermediary with other members as may be required, and can be potentially helpful if there are significant differences of view within a governing body or with the executive.

9.15. In HE normal practice is not to remunerate external members and to pay only travelling and other incidental expenses. However, if the governing body decides it is appropriate to remunerate it should consider: the provisions of charity and employment law; the implications for the division of responsibilities between the governing body and the executive; personal taxation; the public service ethos which applies generally among HE governors; the need to be explicit about time commitments; and the need to apply a formal process of appraisal to the remunerated governor. Where it is decided to remunerate, payments should be commensurate with the duties carried out and should be reported in the audited financial statements.

9.16. The annual corporate governance statement should describe the work of the nominations committee including the governing body's recruitment policy and practices, and a description of its policy on equality and diversity and any measurable objectives that it has set together with progress in their implementation.
10.1. The governing body should adopt an approach of continuous improvement to governance, thereby not only enhancing its own effectiveness but providing an example to the institution about the importance of review and evaluation.

10.2. All governors - including the chair - should have their contribution reviewed regularly using processes agreed by the governing body.

10.3. The governing body should annually reflect on the extent to which it and its committees have met their terms of reference and - where they exist - their annual work plans.

10.4. In addition, the governing body must conduct a regular, full and robust review of its effectiveness and that of its committees, the starting point for which should be an assessment against this Code of Governance and the statement of primary responsibilities it has adopted.

10.5. In reviewing its effectiveness the governing body should reflect on the success of the performance of the institution as a whole in meeting strategic objectives and associated measures of performance, and the value of the contribution of the governing body to that success. The governing body should where possible also benchmark its performance and processes against other comparable HEIs, and relevant institutions outside the HE sector. Account should be taken of the views of the executive, and relevant bodies such as the senate/academic board, and staff and student communities.

10.6. The period between major effectiveness reviews is a matter for debate. The previous CUC Code proposed a review every five years, but codes of governance in other sectors have tended to adopt a period of two or three years (for example the UK Corporate Code). On balance, there is advantage in a three year interval which the governing body should adopt.

10.7. Major reviews of effectiveness should include an external perspective, for example by using a suitably qualified external facilitator.

10.8. The governing body should ensure that a similar review is undertaken of the senate/academic board and its committees.

10.9. Acting on the outcomes of effectiveness reviews is as important as undertaking them, and the publication of outcomes and associated actions should be reported widely including in the corporate governance statement.
Good governance is at the heart of the higher education (HE) sector in the UK, and will continue to be of the highest importance as HE continues to develop. The UK HE system is amongst the best in the world and has a central role in continued national economic development. It is primarily concerned with teaching, learning, research, knowledge transfer and the development of the potential of its students, both for their own sake and to serve the needs of society and the economy. It also plays a major role in shaping a democratic, sustainable and inclusive society. These distinct purposes inevitably impact on its governance structures and practices, including in the need to engage both staff and students in the governance of their institution and a clear recognition of the importance of public benefit.

Effective governance contributes substantially to HE in numerous ways including by: underpinning the institutional success on which international reputation is based; providing assurance to government, the funding bodies and lenders about institutional probity and sustainability; and providing leadership through effective governance to ensure that institutions respond to the numerous challenges facing them in the competitive HE market place.

Background

HE governance has come a long way in the last two decades in response to changing expectations and competitive pressures. The start of the journey can be traced back to the seminal Dearing Report on the future of HE in 1997 which, as well as creating the basis for many subsequent changes, also noted the importance of governance and discussed the need for (but did not formally recommend) a code of HE governance. Subsequently in 2003 the Lambert Review (established by the government of the day to look at HE and business links) was able to conclude that although "some excellent examples" of governance in HEIs were in place, there was a need for further sector wide changes. It also proposed, amongst other things, that there should be: a greater distinction between management and governance in institutions; less reliance on committees for decision making; and the introduction of a voluntary code of governance both to encourage sector wide confidence in governance (and therefore potentially a lighter regulatory touch), and also as a response to the numerous reports at the time on enhancing private sector governance (e.g. Cadbury, Higgs). As a response the first CUC Code of Governance was adopted in 2004.

Since then governance in HEIs has continued to evolve, partly in response to the implications of national changes in HE policy which have included: the ever increasing requirement for HEIs to demonstrate accountability and value for money; expectation from government that HEIs should strengthen governance to match best practice elsewhere; the growth of competitive pressures on HEIs both nationally and globally; government support in England for alternative providers; a substantial increase in the risk facing some HEIs with a consequent need for better governance in a more volatile environment; and an external environment which often requires major decisions to be taken quickly and in a way that does not easily fit with traditional approaches to collegial university decision making.
Such changes have been reinforced by nationwide developments in UK public and private governance which has been under continual scrutiny and media interest. The financial crisis, high profile corporate failures, problems in public sector organisations, and many other examples have raised important questions about the adequacy of governance, and no longer can even prestigious and successful institutions ignore the clamour for change and greater assurance.

As a result, higher education governance has continued to build on best practice in other sectors, so that many of the private sector developments in governance have found their way into HE, including clarifying: the duties and responsibilities of boards; the roles and effectiveness of board members; practices for the recruitment of board members (including in relation to diversity); the role and operation of audit committees (including in relation to risk); requirements for increasing transparency and public disclosure; and the role of stakeholders in active governance. Guidance on many of these developments has been drawn together by the Financial Reporting Council as part of the new edition of the UK Corporate Code for listed companies. As a result other governance codes have sprung up in a range of sectors, and there is a small business code, a code for voluntary organisations, a code for housing associations, one for cooperatives, and so on.

**Challenges to HE Governance**

In the last few years all sectors have suffered failures in governance, and HE has been no exception - although they have been few and far between. However, there is an increasing acceptance of the importance of good governance in protecting the long term sustainability of institutions with the result that all institutions (no matter how distinguished) will want to assure themselves that their governance arrangements are fit for purpose and effective.

In general, the challenges to HE governance are of two kinds: those generic to all kinds of corporate governance, and those specific to HE. The former are likely to become more acute as competitive pressures increase on institutions and include: the sensitivity of relationships between the governing body and the executive; the dangers of governors confusing governance with management and becoming overly involved in operational issues; the difficulty of holding capable and high-performing heads of institution and senior managers to account; understanding the institution well enough to engage in effective challenge; ensuring the effective governance of risk; the related challenge of proactively monitoring institutional performance; meeting expectations concerning environmental sustainability; and the promotion of equality and diversity. To deal with such challenges institutions will have to ensure the effective recruitment and support of governors, and adopt best practice in corporate governance from other sectors.

The specific governance challenges facing HE vary to some extent in the different UK jurisdictions, but include: the move to funding through student fees which creates a very different environment with new pressures on governing bodies, including that of ensuring institutional sustainability; the need for HEIs, as exempt charities, to demonstrate - rather than just assume - public benefit; the need to respond to government policy on 'putting the student first', which inevitably means greater student engagement at all levels of institutional governance and increased transparency; and the need to manage and govern an increasingly wide range of provision, with substantially greater risk, often mediated through more complex institutional structures.
In England the regulatory framework for HE has changed in order to accommodate the new funding environment and growing number of alternative providers. The resulting Operating Framework sets out a description of how all providers that meet the gateway criteria will be held accountable, and to what degree, in terms of quality, financial sustainability, governance and public information. Such alternative providers are adopting varying legal forms and governance structures as they seek to deliver public benefit (if charities), shareholder value (if for profit) as well as respond to the needs of student and the market.

In addition, a particular challenge is likely to occur with regard to the role of the governing body in relation to aspects of academic governance. Traditionally in many HEIs there has been a separation between what was seen as 'corporate' and 'academic', the latter being governed through processes primarily involving academic staff. However, numerous developments have challenged this traditional distinction: greater competitiveness between institutions and the consequences for reputation; greater scrutiny by students and parents in a fee paying environment; the internationalisation of HE and the challenge of assuring its quality; and ensuring due diligence in relation to external activities such as partnerships, collaborations and fund raising. These developments mean that the major issues concerning academic provision are no longer a matter solely for academic governance, since the governing body needs to satisfy itself that academic governance is effective within the institution. There is clearly potential for a confusion of roles here, and it is important that despite the greater involvement of governing bodies, the key responsibility for teaching, learning and research still rests with academic governance structures, for example in the areas of programme design, delivering teaching and assessment, and the primary responsibility for academic quality assurance and upholding standards.

More generally, governing bodies have an important oversight role in ensuring that HEIs play their part in protecting and improving the quality of life for current and future generations, through the skills and knowledge gained by students, research and knowledge exchange and by having sustainable campuses. This represents a considerable opportunity for HEIs and some are playing a leading role in sustainable development; however the challenge is significant and governors have an important championing role. As part of such developments, HEIs will need to demonstrate a strong commitment to carbon reduction, and associated corporate social responsibility.

There is no reason to believe that these numerous challenges will diminish, rather the pace of change is likely to increase. As a result effective governance will become still more important to HEIs. Although some critics will see such developments as a consequence of the 'marketisation' of HE, the reality is that those HEIs most active in enhancing their governance practice are doing so not just to respond to external pressures, but also because they recognise the benefits that effective governance can bring. The challenge for governing bodies in all HEIs is therefore not whether change in governance is necessary, but what should be the nature and pace of it.
Appendix B: Further Information

The main information source to support this Code is the website being developed by the Committee of University Chairs (CUC) at [to be added]. This will be updated regularly to provide information on institutional governance practice to support the Code. In addition the following key information sources amplify the issues set out above:

Each of the four higher education funding bodies provides a range of information to the institutions it funds, including the various financial memoranda. These can be found at:

- The Higher Education Funding Council for England (HEFCE) at www.hefce.ac.uk
- The Scottish Funding Council (SFC) at www.sfc.ac.uk
- The Higher Education Funding Council for Wales (HEFCW) at www.hefcw.ac.uk
- The Department for Employment and Learning in Northern Ireland (DELNI) at www.delni.gov.uk

In relation to the role of governors as charity trustees the Charity Commission publishes useful information (at www.charity-commission.gov.uk) as does HEFCE (at http://goo.gl/WPNoPO).

Governing bodies will normally look to their secretary as a local expert resource on HE governance. A substantial amount of guidance material on HE governance has been produced by a collaboration between the CUC and the Leadership Foundation for Higher Education. In particular there are ten guides for governors in the ‘Getting to Grips’ Series on the following topics: an introduction to being a governor in HE; finance; audit; risk; HR; estates and infrastructure; academic quality and standards; research and knowledge transfer; internationalisation, and information and communication technology. All are available at http://goo.gl/B3ojJf. The same website also has other publications about HE governance that may be of interest.

There are a number of codes of governance used outside the HE sector. The most influential has been the UK Corporate Code as amended in 2012 and produced by the Financial Reporting Council at http://goo.gl/gupho8.

Information on the Committee on Standards in Public Life can be found at www.public-standards.org.uk

The recommendations of 'Woof Enquiry' in relation to the London School of Economics have helped shape the content of this Code. The full report of the Enquiry can be found at www.woolfse.com

The Operating Framework for the regulation of HE in England is published by the Department of Business, Industry and Skills (BIS).