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Guide

Guide for Members of Higher Education Governing Bodies in the UK

Governance Code of Practice and General Principles

Committee of University Chairmen

Please note: The advice in this guide was prepared in August 2004. It is provided on the basis that all persons making reference to it undertake responsibility for assessing the relevance and accuracy of its content.

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Introduction

Institutions of higher education in the UK are complex organisations. Each is characterised by a distinctive ethos, is autonomous, and is responsible for the management and direction of its own affairs. In other respects they are bound together by identical challenges. All are looked to by learners to provide much more than in previous decades, and by Government to underpin economic growth and social engineering. Those who work in the HE sector also have greater expectations of their career opportunities and progression. In 2004 higher education institutions are ambitious communities.

Governing bodies must also be ambitious, as they create the circumstances to convert aspiration into outcomes within a rigorous framework of governance.

This guide shares current good practice and encourages its appropriate adoption across the sector. It is hoped that all higher education institutions will gain from the recommendations we make. We propose a voluntary code of practice to which, it is hoped, all institutions will be able to subscribe. This develops substantially the draft code proposed in the Lambert Report (see Bibliography).

This guide, the first edition of which was published in 1995, is intended to assist members of governing bodies of universities and colleges of higher education in the UK in the performance of their duties. This fourth edition incorporates the outcome of the Committee of University Chairmen's (CUC) latest review of current practice in corporate governance, and the outcome of the recommendations of the Lambert Report. Another new feature is the inclusion of exemplars of good governance practice.

This edition is divided into five parts. **Part I** comprises the new Governance Code of Practice adopted by CUC in the light of the recommendations of the Lambert Report. **Part II** is concerned with the general principles of governance and the role of the governing body. It considers the main responsibilities of members of governing bodies towards their own institutions, to Government and Parliament, and to the wider community.

Part III contains detailed information about specific aspects of the higher education system. It shows the main differences between the HE sectors in England, Northern Ireland, Scotland and Wales. Since the internal organisation, procedures and regulations of individual institutions vary enormously, Part III provides only an overview. Members of governing bodies should therefore refer to the secretary or registrar or clerk to their governing body for information about the arrangements in their particular institution.

Part IV contains case studies from the review of current practice undertaken by CHEMS Consulting, and **Part V** comprises annexes providing background information.

This summary version of the guide contains only Parts I and II. The full guide is a reference document, whilst the summary is intended for wider distribution.

The guide has been prepared by the CUC, in association in particular with the Higher Education Funding Council for England (HEFCE) which has helped to compile and publish it. Such support has been invaluable. Without the encouragement of HEFCE and subsequent engagement of the Higher Education Funding Council for Wales (HEFCW), the Scottish Higher Education Funding Council (SHEFC), the Department for Employment and Learning in Northern Ireland (DEL), Universities UK, Universities Scotland, the Association of Heads of University Administration (AHUA), the Standing Conference of Principals (SCOP), and CHEMS Consulting this guide would not have been produced.

There have been many positive advances in governance since the previous edition of this guide. We trust others will recognise the determination of those who have prepared this guide to deliver to the sector governance models and practices to meet the challenges of today. If we do so, then we anticipate that Government, as one of the funders of the sector, will acknowledge that a lighter touch of regulation is now both appropriate and timely.

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Part I Governance Code of Practice

Role of the Governing Body

This Code is voluntary and is intended to reflect good practice in a sector which comprises a large number of very diverse institutions. Institutions should state that they have had regard to the Code, and where an institution's practices are not consistent with particular provisions of this Code an explanation shall be published in the corporate governance statement of the annual audited financial statements.

1. Every higher education institution shall be headed by an effective governing body, which is unambiguously and collectively responsible for overseeing the institution's activities, determining its future direction and fostering an environment in which the institutional mission is achieved and the potential of all learners is maximised. The governing body shall ensure compliance with the statutes, ordinances and provisions regulating the institution and its framework of governance and, subject to these, it shall take all final decisions on matters of fundamental concern to the institution.
2. Individual members and governing bodies themselves should at all times conduct themselves in accordance with accepted standards of behaviour in public life which embrace selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
3. The governing body shall meet sufficiently regularly, and normally not less than four times a year, in order to discharge its duties effectively. Members of the governing body shall attend regularly and actively participate.
4. The institution's governing body shall adopt a **Statement of Primary Responsibilities** which should include provisions relating to:
 - approving the mission and strategic vision of the institution, long-term business plans, key performance indicators (KPIs) and annual budgets, and ensuring that these meet the interests of stakeholders
 - appointing the head of the institution as chief executive of the institution and putting in place suitable arrangements for monitoring his/her performance
 - ensuring the establishment and monitoring of systems of control and accountability, including financial and operational controls and risk assessment, clear procedures for handling internal grievances and for managing conflicts of interest

- monitoring institutional performance against plans and approved KPIs, which should be, where possible and appropriate, benchmarked against other institutions.
5. This Statement shall be published widely, including on the internet and in the annual report, along with identification of key individuals (that is, chair, deputy chair, head of the institution, and chairs of key committees) and a broad summary of the responsibilities that the governing body delegates to management or those which are derived directly from the instruments of governance.
 6. All members should exercise their responsibilities in the interests of the institution as a whole rather than as a representative of any constituency. The institution shall maintain and publicly disclose a register of interests of members of the governing body.
 7. The chair shall be responsible for the leadership of the governing body, and be ultimately responsible for its effectiveness. The chair shall ensure the institution is well connected with its stakeholders.
 8. The head of the institution shall be responsible for advice on strategic direction and for the management of the institution, and shall be the accounting officer in respect of the use of Funding Council funds. The head of the institution shall be accountable to the governing body which shall make clear, and regularly review, the authority delegated to him/her as chief executive, having regard also to that conferred directly by the instruments of governance.

Structure and Processes

9. There should be a balance of skills and experience among members sufficient to enable the governing body to meet its primary responsibilities and to ensure stakeholder confidence. A governing body of no more than 25 members represents a benchmark of good practice.
10. The governing body shall have a majority of independent members, defined as both external and independent of the institution.
11. Appointments shall be managed by a nominations committee, normally chaired by the chair of the governing body. To ensure rigorous and transparent procedures, the nominations committee shall prepare written descriptions of the role and the capabilities desirable in a new member, based on a full evaluation of the balance of skills and experience of the governing body. When vacancies arise they should be widely publicised both within and outside the institution. When selecting a new chair, a full job specification should be produced, including an assessment of the time commitment expected, recognising the need for availability at

unexpected times.

12. The chair shall ensure that new members receive a full induction on joining the governing body, that opportunities for further development for all members of the governing body are provided regularly in accordance with their individual needs, and that appropriate financial provision is made for support.
13. The secretary to the governing body shall be responsible for ensuring compliance with all procedures and ensuring that papers are supplied in a timely manner with information in a form and of a quality appropriate to enable the governing body to discharge its duties. All members shall have access to the advice and services of the secretary to the governing body, and the appointment and removal of the secretary shall be a decision of the governing body as a whole.
14. The proceedings of the governing body shall be conducted in as open a manner as possible, and information and papers restricted only when the wider interest of the institution or the public interest demands, including the observance of contractual obligations.

Effectiveness and Performance Reviews

15. The governing body shall keep its effectiveness under regular review. Not less than every five years it shall undertake a formal and rigorous evaluation of its own effectiveness, and that of its committees, and ensure that a parallel review is undertaken of the senate/academic board and its committees. Effectiveness shall be measured both against the Statement of Primary Responsibilities and compliance with this Code. The governing body shall revise its structure or processes accordingly.
16. In reviewing its performance, the governing body shall reflect on the performance of the institution as a whole in meeting long-term strategic objectives and short-term KPIs. Where possible, the governing body shall benchmark institutional performance against the KPIs of other comparable institutions.
17. The results of effectiveness reviews, as well as of the institution's annual performance against KPIs, shall be published widely, including on the internet and in its annual report.

Part II General Principles of Governance

1 Summary of Responsibilities of Members of Governing Bodies

1.1 Higher education institutions (HEIs) are legally independent corporate institutions that have a common purpose of providing learning and teaching and undertaking research. They also have an important role in contributing to economic growth through research and developing links with industry and the community (so-called 'third leg' or 'third mission' activities). The governing body is responsible for ensuring the effective management of the institution and for planning its future development. It has ultimate responsibility for all the affairs of the institution.

1.2 The main responsibilities of the governing body should be set out in its Statement of Primary Responsibilities, which should be consistent with the institution's constitution.

1.3 Independent, lay or co-opted governors need to bring particular behaviours to the governing body. They should question intelligently, debate constructively, challenge rigorously and decide dispassionately, and they should listen sensitively to the views of others, inside and outside meetings of the governing body.

Proper Conduct of Public Business

1.4 Governing bodies are entrusted with funds, both public and private, and therefore have a particular duty to observe the highest standards of corporate governance. This includes ensuring and demonstrating integrity and objectivity in the transaction of their business, and wherever possible following a policy of openness and transparency in the dissemination of their decisions. Such diverse funding sources also require that institutions adhere to the good practice appropriate to both public and private sector bodies. Through this guide the CUC seeks to indicate how this can best be achieved.

Strategic Planning

1.5 The governing body has a duty to enable the institution to achieve and develop its mission and primary objectives of learning and teaching and research. This responsibility includes considering and approving the institution's strategic plan, which sets the academic aims and objectives of the institution and identifies the financial, physical and staffing strategies necessary to achieve these objectives.

Monitoring Effectiveness and Performance

1.6 The governing body should regularly monitor its own effectiveness and the performance of the institution against its planned strategies and operational targets.

Finance

1.7 The governing body's financial responsibilities include:

- ensuring the solvency of the institution and safeguarding its assets
- approving the financial strategy
- approving annual operating plans and budgets which should reflect the institution's strategic plan
- ensuring that funds provided by the Funding Council are used in accordance with the terms and conditions specified in the Funding Council's Financial Memorandum
- ensuring the existence and integrity of risk management, control and governance systems and monitoring these through the audit committee
- receiving and approving annual accounts (audited financial statements).

Audit

1.8 The governing body is responsible for directing and overseeing the institution's arrangements for internal and external audit.

Estate Management

1.9 The governing body is responsible for oversight of the strategic management of the institution's land and buildings. As part of this responsibility it should consider, approve and keep under review an estate strategy that identifies the property and space requirements needed to fulfil the objectives of the institution's strategic plan, and also provides for a planned programme of maintenance.

Human Resource Management

1.10 The governing body has responsibility for the institution's human resource and employment policy. This includes ensuring that pay and conditions of employment are properly determined and implemented for all categories of employee. The governing body is also responsible for appointing and setting the terms and conditions for the head of the institution and such other senior posts as it may from time to time determine.

Equality and Diversity

1.11 The governing body should ensure that non-discriminatory systems are in place to provide equality and diversity of opportunity for staff and students.

Students' Union

1.12 The governing body should take such steps as are reasonably practicable to ensure that the students' union operates in a fair and democratic manner and is accountable for its finances.

Health and Safety

1.13 The governing body carries ultimate responsibility for the health and safety of employees, students and other individuals while they are on the institution's premises and in other places where they may be affected by its operations. The governing body's duties include ensuring that the institution has a written statement of policy on health and safety, and arrangements for the implementation of that policy.

2 Conduct of Governing Body Business

Proper Conduct of Public Business

2.1 Governing bodies are entrusted with public funds and therefore have a particular duty to fulfil the highest standards of corporate governance at all times, and to ensure that they are discharging their duties with due regard for the proper conduct of public business.

2.2 Individual members of governing bodies and governing bodies themselves should at all times conduct themselves in accordance with accepted standards of behaviour in public life, which embrace selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

2.3 Attention is also drawn to the provisions of the *Combined Code* (see Bibliography).

2.4 This section outlines the general rules and conventions for the conduct of the business of governing bodies of higher education institutions, particularly those features that assist with compliance with the principles mentioned above. Members of governing bodies of church colleges are likely to have additional responsibilities not covered in this guide, relating to their institution's providing body and in their capacity as trustees.

Procedural Matters

2.5 The governing body should normally meet not less than four times a year. The agenda and supporting papers should be circulated in advance and the decisions minuted. Members should attend all meetings where possible, and the governing body should establish clearly the number, and if necessary the category, of members who constitute a quorum.

2.6 Certain items may be declared to be 'reserved', that is, business which for reasons of confidentiality is not open to discussion by the whole governing body. Such business should be kept to a minimum because of the general need for transparency and openness, but would normally include matters relating to an individual member of the HEI or commercially sensitive material.

2.7 To function efficiently, the governing body must have rules for the conduct of its meetings. Issues for which rules are required include, but are not restricted to:

- procedures for voting, rescinding decisions, calling extraordinary meetings, and declaring business reserved
- requirements for a quorum
- frequency of meetings.

The rules governing some of these issues are specified in the statutes of pre-1992 HEIs or the articles of post-1992 universities and colleges. The institution should draw up standing orders to regulate those aspects of the conduct of governing body business that are not already prescribed by the statutes or articles. Additionally, the institution's standing orders can usefully reiterate the relevant provisions of the statutes or articles in order to consolidate all the material for ease of reference.

2.8 Members of governing bodies should refer to their secretary for further information about the rules applying in their own institutions.

Corporate Decision Making

2.9 The governing body should exercise its responsibilities in a corporate manner; that is to say, decisions should be taken collectively by all of the members acting as a body. Members should not act individually, or as representatives of a constituency or in informal groupings, to take decisions on governing body business on an ad hoc basis outside the constitutional framework of the meetings of the governing body and its committees.

Role of the Chair

2.10 The chair is responsible for the leadership of the governing body and ultimately to the stakeholders for its effectiveness. As chair of its meetings he/she should promote its wellbeing and efficient operation, ensuring that its

members work together effectively and have confidence in the procedures laid down for the conduct of business.

2.11 A chair should take particular care that the governing body observes the principles of public life, and that committees which play a central role in the proper conduct of the governing body's business report back appropriately. The chair should also ultimately be responsible for ensuring that the governing body operates effectively, discusses those issues which it needs to discuss, and dispatches its responsibilities in a business-like way.

2.12 Through leadership of the governing body, the chair plays a key role in the business of the institution, but should not be drawn into the day-to-day executive management. For the governing body to be effective, there must be a constructive and challenging working relationship between the chair and the executive head of the institution. This relationship will depend on the personalities involved, but recent reports by the National Audit Office (see Bibliography) have emphasised the need for both sides to recognise that the roles of chair and executive head are formally distinct. The relationship should be mutually supportive, but must also incorporate the checks and balances imposed by the different roles each has within an institution's constitution.

2.13 Lay or independent members of the governing body should also take care not to become involved in the day-to-day executive management of the institution. This also applies to the staff and student members of a governing body, except that in the course of their employment or in their activities as students, they may have executive responsibilities within the institution.

Role of the Head of the Institution in Relation to the Governing Body

2.14 The head of the institution is responsible for the executive management of the institution and its day-to-day direction. The head of the institution must not seek to determine matters reserved for the governing body.

2.15 The specific responsibilities of the head of the institution in relation to governing body business include:

- implementing the decisions of the governing body or ensuring that they are implemented through the relevant part of the institution's management structure
- initiating discussion and consultation including, where appropriate, consultation with the staff and the academic board/senate on proposals concerning the institution's future development, and ensuring that such proposals are presented to the governing body
- fulfilling the duty, as the officer designated by the governing body under the terms of the Funding Council's Financial Memorandum, to alert the governing body if any actions or policy under consideration would be incompatible with the terms of the Financial Memorandum. If

the governing body nevertheless decides to proceed, then the head of institution has a duty to inform either the chief executive of the relevant Funding Council, or other appropriate officer.

Role of the Secretary or Clerk to the Governing Body

2.16 The secretary or clerk has a key role to play in the operation and conduct of the governing body, and in ensuring that appropriate procedures are followed:

- a. The secretary or clerk to the governing body should be appointed to that post by the governing body.
- b. Normally the secretary combines this function with a senior administrative or managerial role within the institution. The institution and the secretary must exercise care in maintaining a separation of the two functions. Irrespective of any other duties that the secretary may have within the institution, when dealing with governing body business the secretary will act on the instructions of the governing body itself.
- c. In carrying out his/her role as secretary to the governing body, the secretary should be solely responsible to the governing body and should therefore have a direct reporting link to the chair of the governing body for the conduct of governing body business (i.e. agendas, papers, minutes etc).
- d. The chair and members of the governing body should look to the secretary for guidance about their responsibilities under the charter, statutes, articles, ordinances and regulations to which they are subject, including legislation and the requirements of the Funding Council, and on how these responsibilities should be discharged. It is the responsibility of the secretary to alert the governing body if he/she believes that any proposed action would exceed the governing body's powers or be contrary to legislation or to the Funding Council's Financial Memorandum. (Note: the head of the institution is formally responsible for alerting the governing body if any action or policy is incompatible with the terms of the Financial Memorandum but this cannot absolve the secretary from having this responsibility as well.)
- e. The secretary should be solely responsible for providing legal advice to or obtaining it for the governing body, and advising it on all matters of procedure.
- f. The secretary should advise the chair in respect to any matters where conflict, potential or real, may occur between the governing body and the chief executive.
- g. The secretary should ensure that all documentation provided for members of the governing body is concise and its content appropriate.

2.17 It is incumbent on the governing body to safeguard the secretary's ability to carry out these responsibilities. It is important that the secretary also

both consults and keeps the head of the institution fully informed on any matter relating to governing body business (other than in relation to the remuneration committee's consideration of the head of institution's emoluments). It is good practice for the chair of the governing body, the head of the institution and the secretary to the governing body to work closely together within the legal framework provided by the charter, statutes or articles of government and the ordinances and regulations laid down by the institution and the Funding Council's Financial Memorandum. If this is not possible because of inappropriate conduct by one of the parties involved, it is the responsibility of the governing body to take appropriate action.

2.18 If there is a conflict of interest, actual or potential, on any matter between the secretary's administrative or managerial responsibilities within the institution and his/her responsibilities as a secretary to the governing body, it is the secretary's responsibility to draw it to the attention of the governing body. If the governing body believes that it has identified such a conflict of interest itself the chair should seek advice from the head of the institution, but must offer the secretary an opportunity to respond to any such question.

2.19 Further guidance on the role of secretaries or clerks to governing bodies is listed in the Bibliography.

Matters Concerning Members of the Governing Body

Conflicts of Interest

2.20 It is central to the proper conduct of public business that chairs and members of governing bodies should act and be perceived to act impartially, and not be influenced in their role as governors by social or business relationships. Good practice requires that a member of a governing body who has a pecuniary, family or other personal interest in any matter under discussion at any meeting of the governing body or one of its committees at which he/she is present shall, as soon as practicable, disclose the fact of his/her interest to the meeting and shall withdraw from that part of the meeting. A member of the governing body is not, however, considered to have a pecuniary interest in matters under discussion merely because he/she is a member of staff or a student of the institution. Nor does the restriction of involvement in matters of direct personal or pecuniary interest prevent members of the governing body from considering and voting on proposals to insure the governing body against liabilities which it might incur.

2.21 Institutions should maintain a register of interests of all members of the governing body. The secretary and any other senior officer closely associated with the work of the governing body, for example the finance director, should also submit details of any interests. The register should be publicly available and should be kept up-to-date.

2.22 Details of the terms of appointment should be set out as appropriate in the letter of appointment, but institutions may wish to seek a signed undertaking that governors will act responsibly.

2.23 The governing body should have the power to remove any member of the governing body from office, and must do so if the member breaches the conditions of his/her appointment.

Members as Representatives

2.24 Members nominated by particular constituencies should not act as if delegated by the group they represent. No member may be bound, when speaking or voting, by mandates given to him/her by others, except when acting under approved arrangements as a proxy for another member of the governing body.

Induction and Development

2.25 It is the responsibility of the chair of the governing body, working with the secretary as appropriate, to ensure that all members of the governing body, when taking up office, be fully briefed on the terms of their appointment and be made aware of the responsibilities placed on them for the proper governance of the institution. They should receive copies of background documents at the time of their appointment. These could include:

- a copy of this guide
- the institution's annual report, audited financial statements, and financial forecast
- the overall strategic plan, and strategy documents covering areas such as learning and teaching, research, widening participation and estates
- notes describing the institution's organisational structure
- the rules and procedures of the governing body.

It is important for governing bodies to provide an induction or briefing session for new members, to explain their responsibilities, the function of the governing body and other organisations within HE, and the strategic objectives of the institution.

2.26 Following initial induction, members should regularly receive copies of both the institution's newsletter and the CUC newsletter (which is published three times a year), and appropriate publicity material about the institution to help them stay up-to-date with developments. There is an onus on members to keep themselves informed.

2.27 The CUC has established a governor development programme, responsibility for which has been assimilated by the Leadership Foundation in 2004. This includes an induction seminar for new members of governing

bodies which is intended to supplement institutions' own induction arrangements, as well as seminars for more experienced governors and ones on specific topics. Institutions are strongly encouraged to nominate members to attend these seminars and should make appropriate financial provision. A timetable for the governor development programme is issued at the beginning of each academic year.

2.28 Membership of committees provides a particular opportunity for members of the governing body to contribute their expertise to the institution and to learn more about aspects of its operations.

Expenses and Remuneration

2.29 Although a number of sectors now remunerate their non-executive directors for their services, in the HE sector normal practice is to pay only such incidental travelling and subsistence expenses or other allowances to lay members as the governing body may determine. In exceptional circumstances, however, it may be deemed appropriate to remunerate a lay officer. Where this is the case such payments should be commensurate with the duties carried out and shall be reported in the audited statement of accounts.

Strategic Planning

2.30 The governing body will rely on the executive head of the institution to be responsible for the operational management of the institution, and to offer guidance to the governing body on issues coming before it. However, the governing body plays a key role in the strategic development of the institution. It should be involved in the development and approval of the institution's strategic plan, which influences and guides all decisions coming before the governing body. It should also approve an annual operating plan that identifies those aspects of the strategic plan being implemented in the year in question.

2.31 Strategic plans play an important role in informing the relationship between institutions and the Funding Councils.

2.32 Institutions must adopt a risk-based approach to strategic planning.

Risk Management

2.33 Risk can be defined as: '*the threat or possibility that an action or event will adversely or beneficially affect an organisation's ability to achieve its objectives*'. HEIs are expected to identify and actively manage risks, having particular regard at governing body level to risks which could threaten the existence of the institution. An annual disclosure about risk management is required in audited financial statements.

2.34 Each institution's audit committee is required to provide advice to the governing body annually on risk management, control and governance in advance of the governing body approving the audited financial statements.

Delegation

2.35 Where permissible, the governing body may delegate authority or allocate some of its work to committees, grant delegated authority to the chair or a committee to act on its behalf, and delegate responsibility to the executive head and officers of the institution. Such delegations must be clearly defined in writing and be formally approved by the governing body. Having delegated authority to other bodies or individuals to act on its behalf, the governing body is nevertheless still ultimately accountable and has to accept corporate responsibility for the actions taken.

Delegation to the Chair

2.36 The governing body may grant delegated authority to the chair to act on its behalf between meetings. Policy on this matter should be defined in the governing body's standing orders or equivalent. Action taken under delegated authority will normally consist of business that would not have merited discussion at a governing body meeting (such as the signing of routine documents, and detailed implementation of matters already agreed by the governing body).

2.37 Occasionally, matters may arise which are judged too urgent and important to await the next meeting of the governing body. The chair then has the option of calling a special meeting, consulting the members of the governing body by correspondence, or dealing with the matter by chair's action. The chair should be careful not to take decisions by chair's action where it is inappropriate to do so, and not to exceed the scope of the delegated authority granted by the governing body. Chair's action on matters of importance should only be taken where delaying a decision would disadvantage the institution.

2.38 The chair is answerable to the governing body for any action taken on its behalf. Where chair's action is taken, a report should be made to the next meeting of the governing body.

Delegation to Committees and Retention of Key Functions

2.39 It is common practice for the governing body to delegate some of its powers and to allocate some of its work to committees. In deciding which tasks or responsibilities should be delegated to committees, the governing body should retain a formal schedule of matters reserved to it for its collective decision. Such matters are likely to include final decisions on issues of corporate strategy; the review and approval of the institution's annual estimate of income and expenditure and audited financial statements; and the

appointment and dismissal of the head of institution and of the secretary or clerk to the governing body.

2.40 The articles of some institutions list key powers that the governing body may not delegate. They also state that the governing body must establish committees on employment policy (without delegating to them the essential decision-making functions in this area).

2.41 All committees must be provided with a clear remit and written terms of reference, clearly stating the extent and limits of the committee's responsibilities and authority. Committees must take care not to exceed their terms of reference and should be so advised by the secretary to the governing body. Committees should distinguish between issues on which they are empowered to take decisions, and issues that they must refer to the governing body for decision. Where a committee is acting under delegated powers it should submit regular written reports to the governing body on decisions that it has taken on the governing body's behalf.

Committees and the Proper Conduct of Public Business

2.42 Most institutions will have committees dealing with finance, estates and facilities and human resources/staffing. However, there are three committees which should play a central role in supporting the proper conduct of the governing body's business: an audit committee, a remuneration committee and a nominations committee.

Audit Committee

2.43 Institutions are required to have an audit committee, the role of which is covered in Section 3 (paragraphs 3.9-11).

Remuneration Committee

2.44 Governing bodies should establish a remuneration committee to determine and review the salaries, 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.

2.45 Membership of such a committee should include the chair of the governing body, at least three other lay/independent members (not necessarily members of the governing body) and the lay treasurer if such an office exists, from among whom a committee chair should be appointed. The head of the institution may be a member of the committee, but in any case should be consulted on remuneration relating to other senior post holders and should attend meetings of the committee, except when the committee discusses matters relating to his/her own remuneration.

2.46 The remuneration committee must seek comparative information on salaries and other benefits and conditions of service in the higher education sector. Two sources of information are available: the CUC has a database of salaries, benefits and conditions of service for heads of institution (currently available only to chairs of governing bodies); and the Universities and Colleges Employers' Association (UCEA) collects data on the salaries of other senior staff.

2.47 If considering severance arrangements for senior staff, the remuneration committee must represent the public interest and avoid any inappropriate use of public funds. The committee should be careful not to agree to a severance package which staff, students and the public might deem excessive. Contracts of employment for senior staff should specify periods of notice of not more than 12 months, and should not provide for pension enhancements.

2.48 The remuneration committee's reports to the governing body should provide sufficient detail of the broad criteria and policies against which decisions have been made.

Nominations Committee

2.49 Governing bodies should establish a nominations committee to seek out and recommend the appointment of new lay/independent/co-opted members to the governing body. Membership of the nomination committee should include the chair of the governing body (who should normally chair it), at least three other lay/independent/co-opted members, the head of institution and at least one senior member of the academic staff.

2.50 Vacancies for lay/independent members and co-opted members should be publicised (including a job specification and a clear indication of the skills, knowledge and experience required) within and outside the institution. Staff and students, as well as members of the governing body, should be invited to submit names to the clerk of the governing body for transmission to the nominations committee. Some institutions co-opt promising candidates for governing body membership onto committees of the governing body to establish the suitability of those concerned for membership of the governing body itself in due course.

2.51 In making its recommendations to the governing body, the nominations committee must pay regard to the balance of membership and the needs of the institution, and may keep a 'skills register' against which to consider the field of candidates. The question of inclusion of appropriate members of the local community should also be addressed. In the pre-1992 universities the nominations committee's recommendations should be approved by the whole governing body. In some institutions, decisions on the appointment of independent members must be approved by the independent members, but

the whole governing body should discuss the nomination committee's reports before the independent members take their decision.

2.52 The CUC has carried out a survey of good practice on the appointment of persons to membership of the governing body (available from the CUC Secretariat).

Rotation and Re-appointment of Members

2.53 Continuity of membership is important to an institution, but so is the need for new blood. Lay/independent members should be appointed for a given term, which should be renewable, subject to satisfactory performance. In some pre-1992 HEIs, the period of the appointment is laid down in the statutes, but more often it is either left to the ordinances or not prescribed. The renewal of any appointment should not be automatic, but should be recommended by the nominations committee as part of its report on filling vacancies – again subject to satisfactory performance. Continuous service beyond three terms of three years, or two terms of four years, is not desirable (although exceptions, such as retention of a particular skill or expertise, may be permitted). After this point members should normally retire and be replaced by new members. There should be no bar to a particularly valued member returning to office if a vacancy occurs in future years. Where a member of the governing body is elected to serve as chair of the governing body or to some other statutory office such as pro-chancellor or treasurer, he/she would automatically begin a new term of membership linked to the office.

2.54 The re-appointment or replacement of the chair of the governing body should be considered carefully and in good time during the term of the appointment. There are variations of practice in the length of term for which the chair is normally appointed. However, the re-appointment of a chair beyond two terms of four years, or the equivalent, should be regarded as exceptional.

Representation of Staff and Students on Governing Bodies

2.55 The statutes of the pre-1992 HEIs normally provide for membership of the governing body by representatives of the academic staff and students (and in some cases non-academic staff); this is integral to the nature of governance in those institutions. In some institutions these categories of members can be excluded by decision of the governing body. However, the representation of staff and students on the governing body is important in all institutions, and it is strongly recommended that governing bodies do not exercise their power to exclude such members. If, nevertheless, a governing body does decide to exclude them, it should record formally in its minutes the grounds for its decision, and should publish these grounds within the institution and inform the Funding Council.

Principles of Openness and Transparency in the Operation of Governing Bodies

2.56 The general principle applies that students and staff of the institution should have appropriate access to information about the proceedings of the governing body. The agenda, draft minutes if cleared by the chair, and the signed minutes of governing body meetings, together with the papers considered at meetings, should generally be available for inspection by staff and students. There may, however, be matters covered in standing orders where it is necessary to observe confidentiality. Such matters are likely to concern individuals or have commercial sensitivity. Good practice for all institutions might include placing copies of the governing body's minutes on the institution's intranet and in its library, reporting on decisions in a newsletter, and ensuring that the annual report and accounts are circulated to academic departments and the students' union.

2.57 The institution's annual report and audited financial statements should be made widely available outside the institution, and ways should be found for the public, or the local community, to comment on institutional matters that concern them.

2.58 Institutions should consider what is the appropriate means to put this into effect. The statutes of most pre-1992 HEIs include provision for a court, with a wide membership drawn on a representative basis from external bodies, whose terms of reference meet these criteria. Some post-1992 universities, whose articles do not provide for a court, have nevertheless decided to establish representative bodies with a broadly similar function. In any event, institutions should ensure that machinery exists whereby they maintain a dialogue with appropriate organisations in their communities. Institutions should also consider publishing their annual reports on the web.

2.59 The Second Report of the Committee on Standards in Public Life (1996) states that institutions should publish key information to a common standard, including material on governance, in their annual reports. The following good practice is recommended:

- a. Audited financial statements (annual accounts) should include a statement which covers the responsibilities of the governing body in relation to financial management and the financial aspects of corporate governance. A model is included in the specimen financial statements attached to the *Statement of recommended practice: accounting for further and higher education* (SORP), which was published by Universities UK in July 2003. The model will require adjustment to reflect the internal structures of individual institutions, but should otherwise be followed.
- b. The annual report should include a corporate governance statement which sets out the institution's legal status and broad constitutional arrangements, recognises the general principles of public service and indicates how they are implemented, and takes account of the wide range

of constituencies to which the institution reports. A model statement is set out in Annex A. This is an example of good practice, and will require adjustment to reflect the particular circumstances of individual institutions.

Review of the Effectiveness of the Governing Body and Performance of the Institution

2.60 The governing body should review its effectiveness regularly. Not less than every five years it should undertake a formal and rigorous evaluation of its own effectiveness, and that of its committees, and ensure that a parallel review is undertaken of the senate/academic board and its committees. Effectiveness shall be measured against both the Governance Code of Practice (Part I of this document) and the Statement of Primary Responsibilities (Part II, paragraph 1.2). The governing body shall revise its structure or processes accordingly. In reviewing its performance, the governing body shall reflect on the performance of the institution as a whole in meeting long-term strategic objectives and short-term key performance indicators.

2.61 The governing body should also ensure that it is able to discharge its responsibilities through a clear and accurate understanding of the institution's overall performance through a regular process of review. Any such review of performance should take into account the views of the senate or academic board, and should be reported upon appropriately within the institution and outside. Where possible, the governing body should benchmark institutional performance against the KPIs of other institutions.

2.62 In considering their own effectiveness, governing bodies may wish to engage persons independent to the institution to assist in the process, in the interests of credibility.

2.63 The results of effectiveness reviews, as well as of the institution's annual performance against KPIs, shall be published widely, including on the internet and in its annual report.

2.64 The CUC has provided a checklist of possible review points in Annex 5 of *Progress Report of the Working Party on the Effectiveness of University Governing Bodies*, 1999 (see Bibliography).

3 The Regulation of Resource Management

Risk Management, Control and Governance

3.1 Institutions must have a sound system of risk management, control and governance. Essential elements of such a control system are:

- effective review by governing bodies, finance and audit committees with a lay majority
- control systems which include policies, objectives and plans, management of key risks and opportunities, monitoring of financial and operational performance, physical safeguarding of assets, segregation of duties, authorisation and approval procedures, and information systems
- an effective internal audit function
- the identification and management of risk embedded in all business systems.

3.2 At the highest level, risk management, control and governance is exercised by the governing body and its committees acting under its explicit delegation. The governing body has overall responsibility for institutional activities and finances. Many institutions have established a planning and resources committee to consider strategic plans and the allocation of resources to meet such plans. Detailed monitoring of the financial position and prospects is normally delegated by the governing body to a finance committee or equivalent.

3.3 The Financial Memorandum from the Funding Council requires institutions to include a statement of internal control in the corporate governance section of the audited financial statements, explaining the risk management arrangements operated by the governing body.

3.4 Day to day financial control is exercised by officers of the institution under delegation from the governing body. Many pre-1992 HEIs have a lay treasurer (or equivalent), usually with a financial background, who has a constitutional role in presenting financial statements and reports to the governing body. Responsibility for administering the finances and advising on financial matters is delegated to a professional employee, generally designated as director of finance. That individual must have access to the head of the institution whenever he/she deems it appropriate.

3.5 An essential element of financial management is the annual budget. This quantifies expected income and plans expenditure in the context of income expectation. In many institutions the approval of the annual budget is a responsibility reserved under the constitution to the governing body for its collective decision, without delegation. The annual budget must be approved by the governing body before the start of the financial year.

3.6 In conjunction with the revenue budget, a capital budget must be prepared, aggregating approved capital needs and identifying required funding sources and strategies.

3.7 Most institutions devolve the management of clearly identified elements of the annual budget to specified managers. Heads of budgetary

units must be provided with regular (preferably online) financial information to help them manage the resources for which they are accountable. Current trends are to devolve more resources to budgetary units, and to allow them flexible management and virement within prescribed parameters. These arrangements require sound information systems to support them. The governing body and/or its finance committee should receive summarised performance information at regular points in the year.

3.8 Institutions must have financial regulations and procedures. Financial regulations should specify the financial responsibilities and authority of the governing body, its committees, and staff. Financial procedures should specify processes to be followed in day to day financial transactions. There should be clear policies on a range of systems, including treasury management, investment management, risk management, debt management, and grants and contracts. These should be periodically reviewed to keep them up-to-date.

Audit and the Audit Committee

3.9 While the responsibility for devising, developing and maintaining control systems lies with management, internal audit provides independent assurance about the adequacy and effectiveness of risk management, control and governance. The internal audit service may also advise on value for money.

3.10 The Funding Councils require institutions to appoint an audit committee and set up internal and external audit arrangements in accordance with the Audit Codes as may be required by each such Council. The audit committee should be a small, authoritative body which has the necessary financial expertise and the time to examine the institution's risk management control and governance under delegation from the governing body. It should not confine itself to financial systems but should examine risk management, control and governance independently, and report areas of concern to the governing body. The committee must produce an annual report for the governing body, including its opinion on the adequacy and effectiveness of the HEI's risk management, control and governance arrangements; and arrangements for promoting economy, efficiency and effectiveness (value for money).

3.11 In summary, the specific responsibilities of members of the governing body in respect of audit are:

- to appoint the audit committee
- to consider, and where necessary, act on an annual report from the audit committee
- to consider the annual report of the internal audit service
- to appoint the external auditors

- to receive and approve the audited annual financial statements (this responsibility is usually reserved by the institution's constitution to the governing body for its collective decision, without delegation).

Requirements of the Funding Councils

3.12 The conditions of funding set by the Funding Council include requirements set out in a Financial Memorandum (see Bibliography) issued to each institution. The main provisions include:

- institutions must ensure that they have a sound system of risk management, control and governance
- the governing body is responsible for ensuring that funds from the Funding Council are used only in accordance with:
 - the terms of the Financial Memorandum
 - the requirement that Funding Council funds must be spent only on the provision of education and the undertaking of research, or on facilities and activities which are required for these purposes
 - any other conditions which the Funding Council may from time to time prescribe
- the governing body must designate a principal officer of the institution who is responsible for satisfying the governing body that the institution is complying fully with the terms relating to use of Funding Council funds. With rare exceptions, the governing body designates the executive head of the institution as the principal officer
- institutions must keep proper accounting records and submit audited financial statements to the Funding Council by 31 December following the end of the financial year. The financial statements must conform to the Funding Council's Accounts Direction which requires compliance with the *Statement of recommended practice: accounting for further and higher education* (SORP) prepared in accordance with the Accounting Standards Board's requirements
- the governing body must plan and conduct its financial and academic affairs to ensure that the institution remains solvent and that, taking one accounting period with another, its total expenditure is not greater than its total income
- institutions must notify the Funding Council of any event that has, or is likely to have, a material adverse impact on their financial position, as soon as this becomes apparent.

3.13 The Funding Councils also specify procedures to be followed in relation to financial commitments, costing and pricing, financial statements and the use by institutions of publicly funded assets as security for borrowing.

3.14 In addition to the requirement under the Financial Memorandum for governing bodies to ensure that there is a sound system of internal control, they are responsible for ensuring the delivery of value for money (VFM) from public funds. Procurement of works, goods and services is an area where VFM considerations are important.

3.15 European public procurement rules are secondary legislation in the form of directives which are binding upon member states, and effectively harmonise the legislation of the member states. In recent years, the European Commission has intensified its efforts to ensure equitable treatment in the public procurement markets. At the same time, unsuccessful bidders are challenging contract awards more frequently. This has led to a number of landmark decisions by the European Court of Justice.

3.16 In October 2000, the Fifth Chamber of the Court of Justice of the European Communities held, on a reference for a preliminary ruling by the Queen's Bench Divisional Court, that for the purpose of the European Community Directives on public procurement, a body such as a university was a 'body governed by public law' if it was publicly financed as to more than half of its income. For that purpose public financing for universities included local authority student grants, but did not include fees paid by public authorities for consultancy or conferences.

3.17 There are thresholds above which contracts must be awarded according to EU procurement rules. Below these limits, institutions are at liberty to tender locally, but should ensure that sufficient competition is secured in order to ensure that VFM is achieved.

3.18 Governing bodies should ensure that VFM in procurement is achieved through obtaining assurances that:

- adequate procurement policies and procedures are in place
- policies and procedures are consistently applied and there is compliance with relevant legislation.

3.19 Governing bodies should obtain these assurances through the risk management reporting mechanisms which have been established to facilitate the completion of the Statement of Internal Control. To that end, governing bodies should ensure that procurement risks have been covered sufficiently in the risk management framework.

3.20 Conflicts of interest in tendering arrangements for both governors and staff should be avoided. Where governors perceive a potential conflict they should declare this at the earliest possible stage and exclude themselves from any part of the process. Procedures governing conflicts of interest should be set out in the institution's procurement procedures, which should

form part of the financial regulations and should be approved by the governing body.