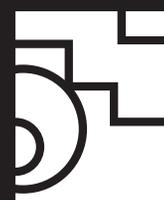


Review of Higher Education Governance

**Universities Scotland's submission to the Scottish
Government's Review of Higher Education Governance**

September 2011

**Universities
Scotland**



Universities Scotland submission to the Review of Higher Education Governance, September 2011

Executive Summary

Universities Scotland welcomes the opportunity to contribute to this review.

Scotland is fortunate to have a governance system for its universities which is extensive, effective and subject to a process of continuous improvement. However, every system is capable of further improvement and, in line with the process of continuous improvement in the sector, Universities Scotland welcomes this Review as an opportunity to secure further evolution of university governance. We have already undertaken initial discussions with UCU and NUS Scotland and will continue this dialogue in keeping with the three organisations' "common cause" statement.

Universities Scotland believe it is critical that the panel's considerations are informed by the following points:

- Universities are large and increasingly complex businesses operating on a global stage – we need to be agile and able to take decisions and operate quickly and flexibly. All of this points to the need to have efficient governance arrangements and to ensure that the regulatory burden is minimised – while still complying with good practice;
- There is ample evidence of a clear link between responsible autonomy and success. In our view, responsible autonomy that respects the rights of the wide range of stakeholders supports innovation, competitiveness and the speed and quality of decision making;
- Amongst publicly funded bodies in Scotland, universities are an exemplar when it comes to staff and student ("customer") involvement in the governance and decision making of the organisation;
- Universities are already subject to an enormous amount of scrutiny, notably through the Scottish Funding Council to Scottish Ministers but also directly to the Scottish Parliament and a wide range of statutory and other regulatory authorities;
- Increased intervention and control by Government or a Supervisory body runs a great risk of diluting and confusing accountability and liability and therefore weakening governance;
- It is important to emphasise that all governors must act in the best interests of the university and this takes precedence over their role and responsibilities as a representative of any particular interest group;
- There is overwhelming evidence that the vast majority of universities are well governed, well led and effectively and responsibly managed. We are satisfied that governing body members ensure that all key proposals are intelligently questioned, rigorously challenged, are informed by experiences wider than those of the academic community itself, are sensitively considered, constructively debated and effectively decided; and
- Universities are autonomous institutions with powers, via charters and statutes that are approved by the Privy Council. The Privy Council approves any changes to our charter and statutes following consultation with the Scottish Government and the Lord Advocate's Office

To ensure that the Review is informed by a thorough understanding of the current governance arrangements in our universities, the sector has provided what it regards to be a full, detailed and

evidence-based submission. The submission proper comprises three sections which can be summarised as follows:

Section 1 explores what good governance means for a diverse university sector which contains large and complex multimillion pound organisations, acting on an increasingly complex global stage and required to engage with and provide accountability to a wide range of stakeholder communities. Referencing the significant existing guidance about governance and the role of the governor, this section notes that society's existing expectations are that governors and governing bodies will:

- provide good governance and leadership by understanding their role
- deliver good governance and leadership by ensuring delivery of the university's strategic mission
- work effectively both as individuals and as a team;
- exercise effective control
- behave with integrity
- conduct business in a manner which is open and accountable.

The section concludes that, guidance for governing bodies could be enhanced to give specific recognition to the interests wider communities have in the contribution made by universities.

Section 2 comprises four sub-headings as follows:

Accountability (sections 2.1 & 2.2) – this subsection outlines in some detail universities' existing extensive accountability to Scottish Ministers and the Scottish Parliament for their use of public funds. It also details the related statutory powers vested in the Office of the Scottish Charities Regulator (OSCR), the Office of the Scottish Information Commissioner (OSIC), the Scottish Public Services Ombudsman (SPSO) and The Auditor General for Scotland. In addition, it details the range of reporting requirements placed upon universities by their stakeholder communities including funders, philanthropic donors, quality assurance bodies and a wealth of subject and professional bodies concerned with academic standards – requirements which extend to more than 550 external lines of reporting at sector level.

Responsible Autonomy (section 2.3) – this subsection examines the strong link between responsible autonomy, competitiveness and the success of universities in contributing nationally and on the international stage. The section goes on to explore the global trend and EU policy context which sees nation states granting increased levels of autonomy to their universities. The section concludes that, in light of the trend amongst competitor nations, protecting universities' autonomy is critical in enabling our institutions to maintain their status as one of Scotland's enduring global success stories, with three of our universities consistently recognised as being among the worldwide top 100.

Governance on the Ground (section 2.4) - this subsection explores current governance practice including:

- The diverse arrangements which support diverse institutions in making their differing contributions to Scotland's social, cultural and economic success (section 2.4.2);
- The importance of "lay members", the critical financial, legal and HR skills they bring to the governing body and the reasons why guidance advocates a majority of such members drawn from outwith the university community and the need to prioritise the long term interests of the institution (section 2.4.3);
- The role of the governor and the expectation that governors in all sectors act in the best interests of the institution, with this obligation taking precedence over any duty owed to those electing or appointing the individual (section 2.4.3);

- The current size and composition of governing bodies, the international trend toward smaller governing bodies and the typical backgrounds of current lay members (section 2.4.4);
- The training, guidance and induction currently made available to governing body members (section 2.4.5);
- The significant representation of universities staff and student communities on governing bodies, with such members currently representing around 30 per cent of governors at sector level (2.4.6);
- The role of the Secretary to the governing body (section 2.4.7);
- Governing bodies' culture of continuous improvement, including effectiveness reviews; and
- Typical arrangements and existing sector guidance for the appointment of Principals (sections 2.4.8 & 2.4.9)

Effectiveness of governance arrangements (section 2.5) - this briefly explores the extent to which universities are governed in a way which enables them to act as effective contributors to the social economic and cultural life of Scotland.

Section 3 sets out Universities Scotland's proposals for further improvement of the governance regime, in areas including:

- The overall relationship between the sector, the Scottish Government, SFC and wider communities, and whether there is a case for an advisory forum representing the societal interest in the sector's contribution to Scotland's wellbeing;
- The case for existing governance protocols to be amended for Scotland in recognition of this wider societal interest;
- Universities' engagement in key local fora to secure the wellbeing of their localities;
- Student and staff engagement in key decision-making bodies;
- The openness of universities' decision-making and the accessibility of its decision-makers;
- The appointment of Chairs, governing body members and Principals;
- The induction and training of governing body members; and
- Reviews of the effectiveness of individual governing bodies.

Many of these improvements can be implemented by the sector itself through the development of a Scottish version of, or supplement to, existing guidance, which could be adopted by institutions on a 'comply or explain' basis. Others will require consideration or action by other parties. We strongly welcome the chance offered by the Review to ensure the continuing evolution and enhancement of governance structures within Scottish universities.

Summary of Recommendations

Recommendation 1: Supplementary Scottish guidance for universities should be developed by Universities Scotland, SFC and the Committee of Scottish Chairs which makes more specific reference to the need for university governance to take account of the contribution which universities make, along with wider stakeholders, to the achievement of economic, social and cultural wellbeing

Recommendation 2: Universities Scotland, SFC and Scottish Government should agree a framework for the periodic updating and publication of indicators of universities' economic, social and cultural contribution, building on existing structures such as the Tripartite Advisory Group (TAG) and the sector-level outcome statement

Recommendation 3: The Review should consider whether universities should give consideration to relevant Community Planning documents in their strategic planning processes.

Recommendation 4: The Review should consider whether universities' engagement with local stakeholders and communities should explicitly be reflected in the SFC's planning guidance to institutions.

Recommendation 5: Supplementary Scottish guidance for universities should be developed by Universities Scotland, the SFC and the Committee of Scottish Chairs which defines the best current practice as the norm for inclusion of students and staff in key decision-making committees of Court.

Recommendation 6: Supplementary Scottish guidance for universities should be developed by Universities Scotland, SFC and the Committee of Scottish Chairs which ensures that all universities comply with best practice in making the discussions of governing body and key decision-making committees conveniently accessible on the internet, except where freedom of information/data protection issues require their non-disclosure.

Recommendation 7: This supplementary guidance should also require that the names of all governing body members should be accessible on the internet, perhaps in a central location, together with details of how to make representations to governing bodies.

Recommendation 8: The supplementary Scottish guidance referred to above should require the application of best practice standards to appointment of Chairs and members of governing bodies, including clear definition of the required competencies, open advertisement, the formation of boards with diverse skills and backgrounds, and the involvement of external persons in key appointments.

Recommendation 9: Universities Scotland, the Committee of Scottish Chairs, the SFC and the Leadership Foundation for Higher Education (LFHE) should develop specific Scotland-wide induction and training support for members of governing bodies.

Recommendation 10: The supplementary Scottish guidance referred to above should strengthen effectiveness reviews by requiring the application of emerging best practice, including the involvement of external members.

Recommendation 11: The supplementary Scottish guidance should establish as a norm that external assessors should be involved in the selection panels for Principals.

Recommendation 12: We do not see the case for further extension of the current model of Rector and recommend that the Review does not give this further consideration.

Recommendation 13: We do not see a compelling case for the development of a single statute. We recommend that the Review does not give this further consideration at this stage.

Recommendation 14: We would welcome the opportunity to work more closely with the Scottish Government to ensure that Scottish institutions are not placed at a competitive disadvantage by relaxations of the regulatory regime for higher education institutions in other parts of the UK.

Recommendation 15: Whilst the underlying principles of good HEI governance must apply to all HEIs, because of their specialist subject areas and stakeholder communities, and also their specific operational needs, the specific governance arrangements for the Small Specialist Institutions (SSIs) should be considered separately, to ensure relevance, proportionality and fitness for purpose.

1. Overview – The context for good governance

Universities Scotland welcomes the opportunity to respond to this review of governance in higher education on behalf of its members, the 19 higher education institutions in Scotland. In addition to this formal written response, Universities Scotland would welcome the opportunity to provide oral evidence to the Review and to participate in more detailed exploration of the points raised.

1.1 The importance of good governance

Good governance is critical to the effective operation of our universities. It secures universities' success in achieving their missions, and in delivering benefits for Scotland's economy, society and cultural wellbeing. At its most basic level, the good governance of Scotland's universities is about the effective definition and execution of universities' missions and strategies. More widely conceived, it is also about securing universities' contributions to societal wellbeing in a way which is proportionate to the level of public investment which universities receive.

Many different communities have an interest in the good governance of universities. Universities are recipients of significant investment by the Scottish Government; are organisations delivering a wide range of public benefits; are recipients of hundreds of millions of pounds of private sector and charity research funding; are registered educational charities; are communities of staff and students; are critical contributors of skilled graduates to the private sector, and are recipients of private bequests and donations. Good governance secures the significant levels of trust which stakeholders place in our universities in each of these roles, and therefore sustains universities' ability to make a full contribution to Scotland's success.

Given the potential implications for staff, for students and for Scotland's wider economic, social and cultural wellbeing, universities take the issue of governance extremely seriously. It is imperative that our institutions are governed well and perceived to be so. Universities Scotland therefore welcomes this review. The review represents both an opportunity to raise awareness of current practice and to consider whether further action should be taken to secure the continued trust of universities' various stakeholder communities.

The remainder of this document articulates universities' understanding of what might be considered to constitute 'good governance' in the twenty-first century; explores current arrangements and best practice in the sector; details the various ways in which universities are accountable to their funders; addresses the review's remit and questions in detail; and identifies areas for exploration of the case for change.

1.2 What does "good governance" mean for Scotland's universities in the twenty-first century?

Overall, the purpose of University governance must be to ensure that institutions are effectively and responsibly managed in pursuit of long-term strategic objectives consistent with their missions and goals. This includes the wider social contributions the sector makes by means of teaching, research and business-engagement as well as the benefits the sector provides in terms of economic growth, social well-being and cultural dynamism, both within Scotland and beyond.

Changing expectations of universities' contribution to society, and the evolution of corporate governance practice across the economy, have informed a process of progressive modernisation of university governance. At a sector level, university governance was explored at length in both 1997¹ and 2004.² Over the past few years numerous measures to enhance university governance have been

¹ Dearing Report, National Committee of Enquiry in to Higher Education, 1997

² Committee of University Chairs (CUC)

adopted, including: clarifying roles and responsibilities through the CUC Guide and Code of Practice; a general reduction in governing body size; enhancements in governor support and development; a widespread sharing of good practice, and the adoption of governing body effectiveness reviews. At an institutional level, universities undertake internal reviews of governing body effectiveness at least every five years, and often more frequently, implementing changes where these improve governance effectiveness.

This review should be seen as a further step in this progressive evolution. Its outcome should be a response to an environment which, alongside intense pressure on resources, is presenting new challenges which include:

- The critical role in economic growth which societies and governments across the globe now ascribe to their universities;
- The increasing internationalisation of our universities (not just in terms of international students coming to Scotland, but in terms of operations based overseas, their international academic and research partners, the growth in the sector's international funding and the increasingly mobile and international nature of staff in the sector) and the global competitive market in which they compete;
- The increasingly interdisciplinary, collaborative and international nature of research;
- The increasing divergence in higher education policy following devolution;
- The global shift towards more streamlined governing bodies for universities;
- The global recognition of the link between governing bodies' autonomy and universities' success; and
- The twenty year shift which has seen the proportion of funding Scotland's universities receive from Scottish Government sources shift from around 70% to around 46%

Against this background, the size and complexity of modern higher education institutions must also be understood. Over a quarter of a million people work and study at Scotland's universities. Our biggest institutions are equivalent in size to the populations of towns such as Dumfries or Clydebank. The complex external environment and the significant societal expectations of our universities means higher education institutions are subject to an increasingly complex regulatory burden and series of regulatory reporting requirements. Work by the Higher Education Better Regulation Group has produced evidence that demonstrating accountability to the numerous stakeholders and communities with whom universities interact currently involves around 550 separate lines of external reporting.³

In such an environment, it is imperative that university governing bodies are small enough in size to act quickly and with flexibility, whilst being of sufficient scale to draw on a wide range of relevant and professional expertise and skills. In striking this balance, governing bodies cannot be wholly representative of their many local, national and international stakeholder communities, nor would this always be desirable if it means a loss of necessary external expertise and experience to the detriment of the institution. Nevertheless, universities' governing bodies are proportionately accountable for the public funds that they receive and are expected to listen and respond to the needs of all relevant stakeholder communities, be they internal, local, national, or overseas. The various ways in which Scottish universities ensure their engagement with these communities are detailed throughout Section 2 of this response.

The outcomes from the review will need to strike a proportionate balance between enabling universities to maintain the autonomy and entrepreneurialism which enables them to succeed in their

³ A sector-wide Survey of Statutory and External Returns 2010, undertaken by the Higher Education Statistics Agency (HESA), Association of Heads of University Administrators (AHUA) and University and Colleges Information Systems Association (UCISA) on behalf of HEBRG. Early findings were announced at the HEBRG Conference on 9 December 2010.

missions, and ensuring both proportionate accountability to funders and the trust and confidence of various stakeholder communities. If we get this balance right, our universities will be well-placed to continue their success in delivering benefits for Scotland by ensuring that their teaching, research and knowledge exchange activities are internationally competitive and best support Scotland's success.

1.3 The principles of good governance – developing a wider understanding of the values underpinning the governance of our universities

Building and sustaining the trust of the very wide range of communities that universities engage with is dependent on a shared societal understanding of the principles which underpin good governance. The principles which currently underpin the delivery of good governance in the sector reflect current practice and are embodied in CUC and OSCR guidance documentation which governing body members are briefed on as part of their induction process. The CUC guidance for members of higher education governing bodies runs to 150 pages; its summary of the role of the governing body is attached as Annex A.

There is no shortage of guidance about the role of governors. The extensive UK guidance for charities, universities and voluntary organisations might, in brief, be summarised as the acceptance that a university governing body and its individual members will:

- provide good governance and leadership by understanding their role;
- deliver good governance and leadership by ensuring delivery of the university's strategic mission;
- work effectively both as individuals and as a team;
- exercise effective control;
- behave with integrity; and
- conduct its business in a manner which is open and accountable.

Arguably, the existing guidance could be enhanced to include explicit recognition of the interests that wider communities have in the contribution made by universities. These communities may be internal, representing students and staff, but can also represent local, national, and even overseas interests.

This submission therefore takes the approach of setting out the existing framework of governance and accountability (section 2) before considering areas, including this wider community perspective, which the Review might usefully explore (section 3).

2. Current governance arrangements - an overview

2.1 The accountability context for university governance – Government & SFC requirements and powers

Whilst universities are autonomous legal entities and formally independent of government and their numerous other stakeholders, they are also subject to a very significant level of oversight. This accountability is critical to all those who fund, learn in or work at our universities. In particular, universities are subject to specific requirements in relation to the safeguarding and use of public funds. This chain of financial accountability involves the Scottish and UK parliaments (for resources which come from devolved or reserved public resources), the Scottish Government, the Department for Business, Innovation and Skills (BIS), the Scottish Funding Council (SFC) and the institutions themselves. Scottish Ministers have (and use) the capacity to impose Conditions of Grant on universities through the SFC which institutions must comply with in order to receive funding. The Scottish Parliament also has recourse to summon the designated accountable officer within a university (i.e. the Principal) to provide evidence before parliamentary committees in relation to financial regularity and propriety.

The SFC has responsibility for ensuring that institutions are making proper arrangements for financial management and accounting and are using public funds in ways which are consistent with the purposes for which they have been allocated. To this end, the SFC requires that all institutions comply with the requirements of the UK Combined Code on Corporate Governance 2008 (Revised May 2010)⁴, in so far as they relate to the higher education sector, particularly in relation to processes of internal control and audit and the publication of accounts.

In addition to these lines of accountability to Scottish Ministers and the Scottish Parliament, in relation to the public funding they receive from this source, universities publish audited accounts covering the full breadth of their income and expenditure and make these freely available on their websites. Universities are also subject to oversight and are accountable for their actions through the statutory powers vested in the Office of the Scottish Charities Regulator (OSCR), the Office of the Scottish Information Commissioner (OSIC), the Scottish Public Services Ombudsman (SPSO), and The Auditor General for Scotland. A range of reporting requirements placed upon them by funders, philanthropic donors, quality assurance bodies and a wealth of subject and professional bodies concerned with academic standards. Further detail on these more specific accountability arrangements is provided in subsection 2.2 and Annex B.

2.2 Accountability

Universities in Scotland are subject to a wide range of oversight and reporting requirements led by a number of statutory bodies. In particular, they are subject to specific requirements in relation to the safeguarding and use of public funds. The chain of financial accountability involving the Scottish and UK parliaments, the Scottish Government and the Scottish Funding Council (SFC) was briefly outlined above at subsection 2.1, but it is important that the review panel's deliberations are informed by the full range of accountability requirements to which the sector is subject and this subsection provides a greater level of detail about these.

The formal relationship between SFC and the individual institution is set out in the Financial Memorandum. The foundation of this relationship is the provision of funding by the Council to the

⁴ The UK Corporate Governance Code sets out standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and relations with shareholders, <http://www.frc.org.uk/corporate/ukcgcode.cfm>

governing body of the institution, according to statute. Institutions are subject to a significant number of requirements upon which funding from SFC is conditional. The status of the Financial Memorandum is crucial in the sector's accountability to the Scottish Government and makes explicit that the governing body must, among other things, ensure that:

- *public funds are used in accordance with relevant legislation and only for the purposes for which they are given;*
- *the institution strives to achieve best value from its use of public funds from all sources; and*
- *the institution takes appropriate account of Scottish Ministers' priorities as expressed in the Council's further and higher education policies and drawn to the institution's attention by the Council*

Additionally, the institution undertakes to adhere to the Council's mandatory requirements (as notified to the institution in circular letters) and to take account of relevant good practice in the management and governance of all its activities and resources including its:

- staff, human resources and industrial relations practices;
- estates and equipment; and
- finances, and risk and internal control procedures.

The SFC's Financial Memorandum is included in full at [Annex E](#).

Further to this, institutions are required to include in their annual audited financial returns to the SFC a statement covering the responsibilities of the governing body in relation to corporate governance. This statement is required to indicate how the institution has complied with good practice in this area and, in particular, whether it complies with the internal control guidance published by the Turnbull Committee.⁵

The formal 'strategic dialogue' meetings which have regularly taken place between the SFC and universities since 2006 represent another important form of accountability and of trilateral communication between funding council, governing body and institutional management. The aims of these strategic dialogue meetings (SDMs) are:

- to provide a better appreciation of how each institution contributes and might contribute to the delivery of the Scottish Government's and the SFC's strategies and policies; and
- to strengthen relationships between the SFC and the governing bodies and senior management teams of institutions

These meetings provide a valuable opportunity for key relationships to be formed directly between members of institutions' governing bodies and SFC and for Council members to gain an understanding of each institution's strategy and vision.

Within these reporting requirements and formal dialogues, the university governing body, as the supreme decision-making body within the institution, is responsible for ensuring the establishment and maintenance of effective internal control systems to safeguard the assets of the institution and to detect and prevent fraud; for ensuring that the financial, planning and other management controls applied by the institution are appropriate and sufficient to safeguard public funds and funds from other sources; and for securing the economical, efficient and effective management of the institution's resources. All institutions must secure the provision of an internal and external audit to ensure that

⁵ Turnbull Guidance on Internal Control, Financial Reporting Council, Revised October 2005

funds are being used appropriately and to ensure compliance with all terms and conditions attached to the funds provided to the institution.

Besides their obligations to report to the SFC, universities are subject to a range of additional accountability and reporting requirements that include, but are not restricted to:

- independent, external review of institutional systems for quality assurance and enhancement by the Quality Assurance Agency for Higher Education in Scotland (QAA);
- direct reporting on their use of public and private funds received from other bodies such as Research Councils UK (RCUK) and charitable funders;
- the regulation requirements of the Scottish Charity Regulator (OSCR), including the submission of annual accounts, an annual return and supplementary monitoring return. OSCR also has the power of enquiry and intervention should any issues of non-compliance or mismanagement/misconduct arise;
- the Scottish Public Services Ombudsman (SPSO) in relation to complaints handling;
- the Office of the Scottish Information Commissioner (OSIC) in relation to the Freedom of Information (Scotland) Act (2002);
- a very high level of regulation in relation to immigration by the UK Border Agency (UKBA);
- the potential for National Performance Audits conducted by the Scottish Auditor General; and
- statutory data returns to the Higher Education Statistics Agency (HESA)

Recent work by the Higher Education Better Regulation Group (HEBRG) and its partners has shown that the UK higher education sector is subject to approximately 550 separate lines of external reporting⁶ and is engaged with at least 130 professional, statutory or regulatory bodies (PSRBs)⁷ that allow institutions to confer certain professional or academic accreditations. The nature of the regulatory and accountability relationships between PSRBs and autonomous higher education institutions (HEIs) is varied and complex.

A more comprehensive analysis of some of the statutory and regulatory reporting requirements to which Scottish universities are currently subject to is attached at [Annex B](#).

2.3 Responsible Autonomy

The review's remit identifies the need to 'observe the benefits of an autonomous sector'. This is essential. Universities and their staff view our universities' autonomous status as intimately linked to their success and international reputation and, as such, believe autonomy delivers positive benefits for staff, students and the social, economic and cultural life of communities throughout Scotland. Scottish universities recognise that, with autonomy, comes responsibility. Subsections 2.1 and 2.2 above provide details of the significant formal levels of accountability that universities are subject to in relation to their use of public funds and this section explores what "responsible autonomy" might mean in this context. Leading on from this, subsection 2.4 provides evidence of the ways in which Scottish university governance currently operates at an institutional level and of the procedures that universities themselves have put in place to ensure that their governance arrangements are fit for purpose and continue to be improved upon.

6 A sector-wide Survey of Statutory and External Returns 2010, undertaken by the Higher Education Statistics Agency (HESA), Association of Heads of University Administrators (AHUA) and University and Colleges Information Systems Association (UCISA) on behalf of HEBRG. Early findings were announced at the HEBRG Conference on 9 December 2010.

7 <http://www.hebetterregulation.ac.uk/OURWORK/Pages/Professional,StatutoryandregulatoryBodies%28PSRBs%29.aspx>

It is critical that in drawing its conclusions the review panel gives consideration to the significant body of research into the benefits that university autonomy provides and the increasing engagement of the European and global policy community with the issue of university autonomy. As such, meaningful discussion of universities' governance by the review panel must be informed by and draw upon:

- The recognition of the benefits of university autonomy within the overall European Union policy context;
- Academic work identifying a positive correlation between autonomy and a university's performance;
- The inherent value in universities' ability to provide a distinct, informed and critical voice, the fact that this is underpinned by their autonomous status, and therefore to maintaining the positive intellectual, social, cultural and economic contribution universities make to society;
- Practical considerations including income generation, universities' charitable status, their ability to generate philanthropic income and the need for effective leadership and management in an increasingly competitive global environment for higher education; and
- A recognition that the current arrangements mean a wide range of technical and sometimes contentious issues are dealt with by the SFC, and that Scottish Ministers are therefore not currently directly accountable to the Scottish Parliament for the range of difficult and contentious decisions which universities have to make

Current European political thinking recognises that universities are best able to contribute to social, cultural and economic wellbeing at regional, national, European and global level where institutional autonomy and mission diversity are promoted and protected. It is also held to be true that greater autonomy, along with increased funding levels, is essential to raise and preserve the overall quality of Europe's universities. Institutions throughout Europe advocate a balance between autonomy and accountability through institutional audit procedures embodying a fitness for purpose approach culturally adapted to countries and institutions and in line with their diverse missions and profiles.⁸

In 2006, the European Commission (EC) stated its position on how best to modernise Europe's universities.⁹ It recommended allowing universities greater autonomy and accountability, so that they can respond quickly to change. The EC stated that universities should have the freedom and the responsibility to set their own missions, priorities and programmes in research, education and innovation; to decide on their own organisation and on the bodies necessary for their internal management and the representation of society's interests; to manage their own physical, financial and intellectual assets for research and education, their budgets (including fundraising) and their partnerships with academia and industry; to recruit and set the compensation rules for their permanent and temporary staff and to target their collective efforts towards institutional priorities in research, teaching and services. In doing so, universities need to accept that they are fully accountable to society at large for their results, including the cost-efficiency with which these are achieved. As detailed elsewhere in this response, Scottish universities recognise this and are already heavily accountable to SFC and, by proxy, the Scottish Government for the public funds which they receive.

In keeping with the Glasgow Declaration and EC policy, the Council of Europe adopted text on academic freedom and autonomy in Recommendation 1762 (2006).¹⁰ This makes clear the value of university autonomy in noting that '*history has proven that violations of academic freedom and university autonomy have always resulted in intellectual relapse, and consequently in social and economic stagnation*'. Such recognition is balanced with appropriate recognition that their autonomous status entails a responsibility to society and that universities '*should be expected to live up to certain*

8 Glasgow Declaration: Strong Universities for a Strong Europe. European University Association 2005

9 European Commission Press Release, IP/06/592. Brussels, 10 May 2006

10 Council of Europe Parliamentary Assembly, Recommendation 1762 (2006). Academic Freedom and University Autonomy

societal and political objectives, even to comply with certain demands of the market and the business world, but they should also be entitled to decide on which means to choose in the pursuit and fulfilment of their short-term and long-term missions in society’.

Several recent studies have identified a correlation between the extent to which universities are autonomous and their performance in areas such as research and financial diversification. A 2010 paper¹¹ tests the hypothesis that universities are more productive when they are both more autonomous and face more competition. Using survey data, the authors constructed indices of university autonomy and competition for both Europe and the United States. The central finding of the paper is that universities which have greater autonomy and are subject to greater levels of competition are more productive and effective (measured by patents and publications). Similarly, a 2011 report by the European University Association (EUA) explored the suggested link between income diversification and the degree of institutional autonomy of universities. The hypothesis is that institutions that can enter freely into partnerships, or have the ability to create for-profit entities, or can borrow or raise money on the financial market, will be more successful in pursuing and developing additional funding streams. Autonomy, therefore, constitutes a prerequisite for the implementation of successful strategies by which universities can diversify their income streams – a critical consideration in current economic circumstances. As noted elsewhere in this response, Scottish universities have been successful in diversifying their income streams in recent years and decreasing their reliance on sources of public funds. This is a direct result of the effective governance that they have been able to exercise thanks to the level of autonomy they currently have. These findings suggest that any threat to the current level of autonomy in Scottish university governance could have a detrimental effect on institutions’ research performance and their abilities to attract new and diverse sources of income.

In considering the internationally-evident correlation between institutional autonomy, competition and higher education sector performance, the review panel members will want to consider the approaches being adopted by Scotland’s competitor nations. Across Europe, nations are reforming their university governance arrangements to provide greater levels of autonomy for their institutions’ governing bodies and are moving increasingly further away from mechanisms of governance that allow direct or indirect governmental control. These reforms have led to the passage of reforming legislation in a number of EU member states which has reduced the size of governing bodies, increased the proportion of lay members and provided increased levels of autonomy and independence to universities in Europe. It is clear that the recognised correlation between greater autonomy and increased performance has been understood by competitor nations in Europe who are keen to alter the current situation which sees universities in Scotland (which currently provides its universities with an autonomous model of governance) out-performing more significant competitor EU economies.

By most accepted performance measures, universities in Scotland are highly successful in delivering significant benefit for the Scottish economy and continue to compete effectively on an international stage, despite the Scottish Government’s recognition that Scottish universities receive lower levels of overall investment as a proportion of GDP than institutions in competitor nations throughout the OECD countries.

Universities are one of Scotland’s enduring global success stories. Three of our universities are recognised as being in the worldwide top 100. From the evidence of both experience and academic enquiry it is clear that Scotland’s ability to continue to ‘punch above its weight’ as a leading player in the knowledge economy and sustain the international competitiveness of its higher education sector is only made possible because Scottish institutions enjoy sufficient autonomy in their current governance and management structures to allow them to be able to respond quickly and flexibly to an ever-changing external environment.

¹¹ The governance and performance of universities: evidence from Europe and the US (Aghion et al.) 2010

It is also vital to recognise that governing bodies are already required to make tough decisions and, in the future, will have to take even more difficult and sometimes unpopular decisions in the context of significant resource constraints. An unpopular decision made by a governing body is not necessarily a bad decision. As a consequence, it is critical that there is a clear locus of authority and of responsibility vested in the governing body of each legally-independent university and that the potential legal liabilities of other bodies in the sector are borne in mind. As higher education becomes more and more competitive, global trends in university governance are consistently towards smaller and less “representative” governing bodies which are more rather than less autonomous.

2.4 Governance on the ground

2.4.1 Background to universities’ current governance arrangements

The institutions that comprise the higher education sector in Scotland have diverse backgrounds, traditions and missions that are reflected in their constitutional arrangements and in the structure and powers of their governing bodies. The older institutions or ‘Ancients’ have a statutory base, the pre-1992 universities were established by charter in the 1960s and the newer institutions which were established after 1992 are designated as universities under the Further and Higher Education (Scotland) Act 1992. The Scottish sector also includes a number of other higher education institutions, notably the Small Specialist Institutions (SSIs). The constitutional arrangements of these and the post-1992 institutions variously draw on a mixture of the 1992 Act, the Companies Act and other legislation (see [Annex C](#) for details of the different categories into which our member institutions fall).

2.4.2 Diversity

Different universities have different histories, complementary missions and diverse strengths. Consequently, they also have different strategies, structures and governance arrangements. This diversity is a strength: it supports institutional competitiveness and thereby enables the very broad collective contribution our universities make to social, cultural and economic life both in Scotland and further afield.

This diversity is apparent in the size and structure of institutions themselves. Income at Scottish institutions in 2009/10 ranged from around £14m to over £630m while the number of students also varies, depending on an institution’s mission and purpose, from around 800 learners to over 20,000. The widely varying extent to which all 19 Scottish institutions are reliant on public funds is a clear indicator of institutional diversity and the drive by some to further diversify income streams, based on institutional purpose and intent. In 2009/10, the proportion of core public funding was as little as 32% for some institutions.

Although Scottish institutions are diverse in origin, size and organisation, they share the following characteristics:

- legally independent and autonomous corporate institutions;
- bodies with charitable status; and
- accountable through a governing body which carries ultimate responsibility for all aspects of the institution

As such, the overriding principles outlined above have relevance across all our member institutions.

2.4.3 The role of the governing body and the role of the ‘lay governor’

Universities each have their own governing bodies, usually, although not uniformly, called Courts which are empowered as legal entities and charged with governing and administering the institution. Invariably, the main functions of the governing body include setting the overall strategic direction of the institution, superintending its finances, determining its estates strategy, the overall management of human resources and ensuring that robust and appropriate management structures and processes are in place. In line with internationally recognised best practice the governing body will typically have a 'lay majority'. This means that amongst its membership there will be a majority of 'lay members' who are external and independent and who are neither employees nor students of the university.

This majority of independent appointed members is critical to ensuring that the governing body is able to draw on a wide range of experience and skills and that it is informed by the interests of external communities. This ensures that the balance in decision making rests with experts drawn from wider interests and relates to the longer term objectives for the university. This balance guards against the possibility of decision-making being unduly influenced by any short term or vested interests which might be held by those members of the governing body drawn from the institution's management, staff and students. These independent governors are akin to non-executive directors on a company board, and bring a wide and necessary range of skills and experience to governing bodies and their number includes strong representation from business and industry. Typically institutions will seek to appoint a range of lay governors which enables it to draw upon a significant body of legal, financial, human resource, public service, third sector and leadership expertise. Their role in particular is to ensure that all key proposals are intelligently questioned, rigorously challenged, informed by experiences wider than those of the academic community itself, sensitively considered, constructively debated and effectively decided.

Each governing body has a number of specialist committees reporting to it and with delegated authority to take forward action in key areas such as finance, audit, employment matters, and estates. Whilst these smaller groups, necessarily, tend to draw heavily upon the specific expertise of individual lay governors, many institutions include elected or appointed staff and student governors as members of key committees of Court.

As with other sectors, higher education has developed its own Governance Code of Practice and General Principles. This Code, developed in light of the Lambert Report by the Committee of University Chairs (CUC), is intended to reflect good practice in a sector which comprises a large number of very diverse institutions. Although adherence to the code is voluntary, a 'comply or explain' approach is adopted; institutions are expected to report in the corporate governance statement of their annual audited financial statements that they have had regard to the code, and, where an institution's practices are not consistent with particular provisions of the Code, an explanation should be published in that statement. This is in addition to the compliance amongst all Scottish universities with the relevant key principles of UK Combined Code on Corporate Governance 2008 (Revised May 2010). As with the CUC code, this code operates on a 'comply or explain' basis.

The full CUC Code of Practice is attached as [Annex A](#) but some of the expected behaviours of UK university governing bodies and their members, which all Scottish universities already adhere to on a 'comply or explain basis', are as follows:

- A governing body of no more than 25 members represents a benchmark of good practice;
- The governing body shall have a majority of independent members, defined as both external and independent of the institution;
- In appointing new members, full consideration shall be given to the desirable capabilities, based on a full evaluation of the balance of skills and experience of the current members;

- Support for members of governing bodies should be available in the form of induction for new members and opportunities for continued development in accordance with individual needs;
- Members of governing bodies should actively participate in regular meetings and conduct themselves in accordance with the highest standards of behaviour in public life;
- There should be balance of skills and experience among members sufficient to enable the governing body to meet its primary responsibilities;
- Members of governing bodies should exercise their responsibilities in the interests of the institution as a whole rather than as a representative of any constituency i.e. any duty a member may feel they owe to those electing or appointing them is superseded by their obligations as a member of the Court;
- The governing body will undertake a ‘formal and rigorous’ evaluation of its own effectiveness not less than every five years with the results being published widely, including on the internet;
- The Principal shall be responsible for advice on strategic direction and the management of the institution. They shall be accountable to the governing body which shall make clear, and regularly review, the authority delegated to him/her;
- The appointment and removal of the Secretary to the governing body shall be a decision of the governing body as a whole;
- The proceedings of the governing body shall be conducted in as open a manner as possible with information and papers restricted only when the wider interest of the institution or the public interest demands; and
- The Code of Practice should be published widely, including on the internet and in the Annual Report of the institution. Key individuals (Chair, Deputy Chair and Head of Institution) should be identified;

The role, duties, and obligations of individual members of higher education governing bodies are also extensively covered in the CUC guidance. In addition to possessing a suitable skill set, dependent on the needs of the individual institution at any given point in time, university governors should be able to ‘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’. The need for members of governing bodies to be able to ‘decide dispassionately’ requires that they act in the best interests of the institution as a whole, *with this obligation to take precedence over any duty a member may owe to those electing or appointing him or her*. This important obligation is stipulated in the CUC Code of Practice, applies to all members of the governing body and, alongside the lay majority, reinforces the need for the governing body to prioritise the longer term considerations of the university and its many stakeholder communities over the immediate preoccupations of the institution’s management, staff and students.

The CUC guidance further requires members of governing bodies to conduct themselves at all times in accordance with the accepted standards of behaviour in public life, which embrace selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It is worth re-stating that, in all significant aspects, every Scottish university complies with, the CUC Code of Practice, except where specific governance structures reflecting an institution’s origins, for example the Scottish Agricultural College (SAC), mean it is not fully applicable.

2.4.4 The size, composition and membership of universities’ governing bodies

In recent years, Scottish universities’ governing bodies have reduced in size as part of a wider move towards modernising governance and meeting the standards of best practice as specified by the CUC Guidelines and the recommendations of the 1997 Dearing Report. The move towards smaller and

more responsive governing bodies is consistent with international trends in university governance, where a smaller number of members and a majority of non-academic (lay) members are increasingly favoured. Although some countries, such as Denmark, Australia, and New Zealand have suggested an even greater reduction in the size of university governing bodies, Scottish universities believe that the current size allows a sufficient balance between their need to react flexibly to financial and regulatory challenges, the need to involve a university's numerous stakeholders (including staff, students, and wider communities) and the need for a sufficient range of lay members with the necessary range of relevant expertise to govern effectively.

Within these limitations on size, elected or appointed staff and students currently make up around 30 per cent of the membership of university governing bodies in Scotland¹². Around 60 per cent of governors are drawn from the wider community, including the third sector, health service, business and local authorities, and from the university's own alumni community, representing ex-students' continued interest in the success of their university. In some cases, these include democratically elected local authority figures who are appointed to governing bodies as *ex officio* members. By contrast, less than 9 per cent of members of governing bodies across the sector are senior managers or university principals. In most cases the Principal is the sole representative of senior management on the governing body.

A more important consideration than the size of the university governing body is the blend of skills, experience and motivation among members and the method of their appointment. Appointment processes must be consistent with achieving this optimal skills mixture amongst the lay governors. Institutions which externally advertise governing body vacancies for lay members find that this process consistently delivers highly motivated candidates more closely matched with the skills required by the governing body. Any move towards a greater use of election by one or more subset of stakeholders, or to a less open and competitive appointment process for the appointment of lay governors is likely to compromise universities' ability to achieve the necessary and evolving mix of skills and experience that governing bodies require. Recommendations relating to the appointment of members of university governing bodies are provided at section 3.2.

Some stakeholder groups have occasionally suggested an over-representation on governing bodies of lay governors who come from a business background. As discussed above, the presence of suitable business professionals on governing bodies is consistent with best practice and is necessary to ensure that institutions benefit from the required levels of expertise and experience in the financial, HR, legal and similar matters required to deal with a complex external environment. Any suggestion that governors with a corporate or business background are over-represented is not borne out by the data. Analysis of a representative sample of nine Scottish university governing bodies¹³ shows that 54% of lay governors come from such a background whilst the remaining 46% were drawn from a range of other relevant backgrounds. More detailed analysis indicates that this latter group represents a wide range of universities' relevant stakeholders, including: public sector bodies (schools, NHS, local authorities), charities, and other partners.

2.4.5 Training

In order for members of university governing bodies to be able to perform their duties and obligations to the highest standard, it is imperative they receive appropriate support and training which provides

¹² Based on analysis of the governing bodies of 14 universities and 3 SSIs.. UHI is excluded because of its unique partnership model but still has a majority of lay members and includes staff and student representation. SAC is also excluded because of its corporate board structure.

¹³ Based on analysis of the governing body composition and individual biographies of lay governors at nine Scottish universities (3 x Ancient, 2 x Pre-1992 and 4 x Post-1992).

them with an informed understanding of the complexities and subtleties of the modern higher education landscape as outlined above at subsection 1.2. Induction training, documentation such as Court Handbooks, continuing development opportunities and pre-meeting briefings are routinely made available internally to members of all Scottish university governing bodies. In addition to these internal induction and training processes, national support exists in the form of the Governor Development Programme run by the Leadership Foundation for Higher Education (LFHE), in collaboration with the CUC. This programme has provided governor training and development since 2004 and is driven by:

- the enhanced prominence given to governance in an increasingly complex environment;
- the need to ensure that all governors have the necessary knowledge and skills to fulfil their role; and
- the need to ensure that governors are able to meet the requirements of the funding bodies in relation to institutional accountability.

In 2009/10, the programme provided 20 events covering a range of diverse governance issues whose content was informed by experience and by previous feedback from governors (court and board members), clerks and secretaries. The 2009/10 programme included a one-day induction event specifically for new governors in Scottish HEIs. During this single academic year, Scottish HEIs recruited a significant proportion of newly appointed governors to LFHE governor training and development events.

Substantial information and resources about higher education and university governance are independently available to the members of governing bodies through the LFHE's governance website. This website exists to support governors and others involved in the governance of higher education institutions. It is specifically targeted at those new to higher education, especially new members of governing bodies, and makes particular reference to the devolved nations.

The range of resources and development opportunities available on a UK-wide basis is regarded internationally as offering a very high standard of support. The Development Programme is highly valued by members of governing bodies with 82% of attendees in 2009/10 rating the content and presentation of sessions as 'Excellent' or 'Very Good'. It should be noted that, due to the significant funding support it receives, the LFHE already has a specific accountability to the four higher education funding bodies of the UK, including the SFC.

With a view to building on the already significant levels of attendance by members of Scottish university governing bodies at training events, Scotland's universities are keen to do all that is possible to further increase attendance. All members of governing bodies give of their time and expertise voluntarily and have many pressing commitments in other areas of their life that compromise their ability to attend training events, often located outside of Scotland. Section 3.2 explores the possibility of implementing Scotland-specific training provision for members of Scottish university governing bodies, perhaps building on the existing expertise which resides within the CUC and LFHE.

2.4.6 Accountability to internal communities – staff and student representatives

Universities are unusual in the extent to which they provide both staff and past and present service users (students and alumni) representation on their governing bodies. As a survey of the current Scottish university governing body membership shows, there is significant representation of these constituencies across the sector with current staff and students collectively representing around 30 per cent of all governing body members at Scottish institutions.

In a number of institutions, staff and student governors also play a role on sub-committees that determine, amongst other issues, the nomination of governing body members and the general funding strategy of the institution.

It should be noted that, when appointing governors from amongst staff members or from the body of former students, consideration is given to the range of skills required by the governing body and those members of staff who may be appointed from the Senate or Academic Council, for example, are usually high-performing academic staff who have demonstrated the relevant level of expertise and experience. *Where a member of a governing body is elected or appointed ex officio, this necessary level of expertise cannot be guaranteed.*

The role of the academic senate or board in regulating and directing the academic work of the university should also be stressed as a key element of internal governance. Whilst the precise constitutional arrangements vary, the senate is invariably regarded as the authority on purely academic matters within the institution. Decisions by the governing body which have academic implications (for example the closure or creation of an academic department) are subject to consultation with the senate, and the senate would normally be expected to be the initiating body in such matters. As a result, University Senates have a key role in the academic governance of the institution, and must be seen as an integral part of the governance structure of a university.

As the membership of the Senate is drawn from within the university, it represents the entire academic community. In most cases students will also be represented. As Senates play a key role for dialogue between the Executive and staff and students and in academic governance, it is important that Senates/Academic Boards are proportionally and effectively representative of the staff and student body, and the leadership of academic resource units in a University. It may be helpful for any Scottish guidance on governance to record the best practice followed by Scottish Institutions in how their Senates/Academic Boards operate, and to encourage common practice in this important area of governance.

2.4.7 The role of the secretary

The ability of the governing body to operate effectively is not solely dependent on the governors themselves. The secretary of the governing body of a university has a crucial role in the operation and conduct of the governing body, and in ensuring that appropriate procedures are followed. While the secretary is also normally a senior manager within the institution (ensuring that governing bodies have access to advice which is informed by a close knowledge of the issues facing the institution), CUC guidance specifically safeguards the responsibility of the secretary to the governing body as outlined at Annex F.

The university secretary has a complex set of responsibilities that have grown in importance in recent years, in line with the increasing emphasis on governance in the higher education sector. The secretary is responsible for managing the quality of information presented to the governing body and for safeguarding standards of good governance. This responsibility is fundamental to the good governance practice expected of higher education institutions.

The secretary often plays a key role in managing governing relationships between the Chair of Court and the head of the institution and between the institution and the governing body. Other important areas of influence are in the induction of new governors, and planning and management of the meetings of governing bodies.

Given the very specific nature of the existing relevant guidance that already exists and the fact that it is adhered to in ensuring that chairs of governing bodies are provided with high-level executive

support and guidance, Universities Scotland suggests that the role of the secretary to the governing body, as it is currently constituted and understood, is an essential one and operates satisfactorily.

2.4.8 A culture of continuous improvement

The higher education sector has actively enhanced its governance in the past decade through the conscious efforts of institutions to align themselves with recognised best practice and, according to a 2008 survey by the Office of Public Management, is generally recognised to be well governed.¹⁴ Initiatives to support enhanced governance have included a number of activities of the Committee of University Chairs (CUC), the establishment of the Leadership Foundation and its subsequent work on governance, and the general encouragement of the UK funding bodies, including the Scottish Funding Council, to enhance governance and accountability. Nevertheless, the changing environment in which universities function and the critical need to preserve the trust funders and other stakeholders place in university governors, outlined in Section 1 of this document, drive the sector to seek continuous improvement in the pursuit of ‘good governance’

One element of this pursuit of continuous improvement is the cycle of effectiveness reviews which governing bodies undertake, as recommended by the CUC guidance. A 2009 report by the LFHE on governing body effectiveness and performance in the UK higher education sector¹⁵ identified strengths in the process of institutional governance and reported that there had been a general sector-wide implementation of the CUC Code.

As part of their compliance with the CUC Code, all Scottish university governing bodies undertake a ‘formal and rigorous’ effectiveness review at least once every five years. A recent survey of Scottish governing bodies confirmed this practice and found that around half of institutions had undertaken or proposed to undertake reviews more often than once every five years.¹⁶ The results of these reviews are published by the governing body, including on the internet. In addition to a regular full effectiveness review, many institutions also undertake annual reviews of aspects of their governance arrangement (for example to assess the extent to which a scheduled annual work plan for the governing body or a sub-committee has been completed effectively).

In addition to regular internal reviews, the LFHE and CUC have undertaken a project with the governing bodies of 16 institutions to pilot a new approach to reviewing governing body effectiveness.¹⁷ This project identified key performance and management criteria and provides a framework for identifying governing body effectiveness. It also offers guidance to assist institutions in undertaking future governance effectiveness reviews.

2.4.9 Appointment of the university principal

The identification and appointment of the Chief Executive Officer (Principal) of the university is one of the most important decisions that can be made by members of the governing body. The process must be effective in securing the best possible candidate from the widest possible pool of talent and be conducted in a fair and transparent way. In recognition of the importance of this process, Universities

¹⁴ See Appendix A of Schofield A, What is an Effective and High Performing Governing Body in UK Higher Education. 2009

¹⁵ Schofield A, What is an Effective and High Performing Governing Body in UK Higher Education. 2009

¹⁶ Results of a Survey of Practice in Undertaking Effectiveness Reviews of Governing Bodies (Courts) in Scottish HEIs, Leadership Foundation for Higher Education and Committee of University Chairs. 2010

¹⁷ A Framework for Identifying Governing Body Effectiveness in Higher Education. 2011

UK, Guild HE and the LFHE, worked with the UK funding councils and a range of other stakeholders to produce extensive up-to-date guidance and examples of good practice for the sector.¹⁸

The appointment of a new Principal requires the approval of the entire governing body. It is likely however that a smaller search panel or committee will be convened to undertake the selection process and make recommendations to the governing body. The composition of this search committee will differ by institution but might typically include lay members of the governing body as well as staff members. Further consultation might be expected to take place with senior academic staff and members of the executive team. Good practice dictates that the search committee will contain people from a range of relevant backgrounds and that membership will be representative of the main groups with an interest in the continued success of the institution.

It is in the best interests of the institution, in order to address any issues of gender and equality imbalance and to secure the best possible candidate, to ensure that the process of appointment draws on the widest talent pool possible, including that found beyond the senior academic body. To this end, the post will be advertised nationally and internationally. The institution may also draw upon the services of a professional recruitment agency to assist in attracting as strong a field of candidates as possible. The search committee will draw up a shortlist of candidates and carry out interviews. The candidates may also meet informally with academic managers, whose views are shared with the search committee before it makes its recommendation. Any recommendation requires the approval of the full governing body before an appointment is made.

Scottish universities take the view that the current search and appointment process is robust and transparent; meets UK good practice guidelines; involves a range of governing body membership in the search phase and, with the appointment requiring the full approval of the governing body, secures this critical process from undue influence from any one stakeholder community. Nevertheless there may be scope for further improvement through the inclusion of external assessors in the appointment process.

2.5 Effectiveness of governance arrangements

The most obvious indicators by which to gauge the effectiveness of current governance arrangements in Scottish universities are the sector's performance in the form of the contribution that it makes to the Scottish economy and the sector's international reputation and competitiveness.

Universities play a central role in Scotland's economy, society and international reputation. This contribution has been recognised by the Scottish Government in its 'New Horizons' report, where it was affirmed that:

Scotland starts from a position of strength. Our universities are among the strongest and most vibrant institutions in civic Scotland. As autonomous institutions whose fundamental purpose is the discovery and dissemination of knowledge and truth, they play a crucial role not only in facilitating wealth creation, but also in developing cultural identity, in providing an independent and objective analysis of public policy and in fostering a more enlightened, more tolerant and better informed society. The activities of our universities will play a central role in contributing to the achievement of the Scottish Government's Purpose – increasing sustainable economic growth for the benefit of all – and of its five Strategic

¹⁸ Appointing Heads of Higher Education Institutions: A resource for governors, UUK, 2009

*Objectives and associated National Outcomes, Indicators and Targets. The fundamentals of Scotland's universities are solid and show we start from a good position.*¹⁹

Multiple economic studies have confirmed the impact of Scotland's universities. Biggar Economics' 2010 study stressed these impacts including:

- £6.2 billion GVA: 6 per cent of Scotland's total Gross Value Added;
- 149,000 full-time equivalent jobs, or 7.6 per cent of the entire Scottish workforce;
- £0.5 billion per annum of competitively-won funding for research; and
- £0.5 billion per annum income to Scotland from fee-paying international students

Universities are a major contributor to the success of Scotland's key industries which will be central to the capacity to develop the new industries which will drive the re-industrialisation of Scotland. In 2009, research and development carried out by Scottish universities was worth £984 million, representing 51 per cent of all research and development in Scotland. In addition to this, universities transfer over £300 million of costed expertise to business per year. Universities are at the core of Scotland's success in areas including renewable energy, life sciences and the creative industries: they are also at the centre of new ideas-driven industries which have yet to be conceived.

An indication that Scottish universities continue to have appropriate levels of engagement with their students is provided by the latest results of the National Student Survey 2011 (NSS). The overall rate of student satisfaction within Scottish institutions was 86%, compared to a figure of 83% for institutions in the rest of the UK. The contribution that these students make to the national economy upon graduation is also higher in Scotland. The recent Destinations of Leavers from Higher Education results produced by HESA show that Scottish graduates are more likely to be in positive destinations six months after graduation than graduates from any other part of the UK. This also showed that Scottish graduates have the highest median salary and the lowest rate of unemployment amongst all UK graduates.²⁰

Among sectors in receipt of public funding, universities have a unique track record in diversifying sources of income. In the early 1990s more than 70 per cent of income came from core public grants. This has now reduced to around 46 per cent of total income. Again, this is a result of effective institutional governance and management in ensuring future financial sustainability and diversification of income streams.

In examining the current level of effectiveness in HEI governance in the UK, Schofield (2009) noted the extent to which the higher education sector had responded to various national developments in governance over the preceding two decades and the positive influence this had on the development of effective governance arrangements.²¹ He found that substantial guidance had been made available to governing bodies and their members, including the CUC Guide and Code of Practice. Schofield also highlights the already significant level of additional assurance that the four UK funding bodies provide in relation to effective governance arrangements. All funding bodies expect universities to meet defined standards in governance, audit, risk, and associated issues, as a condition of the public funding they receive. As mentioned above at subsection 2.4.8, the 2008 Office of Public Management survey of UK university governing bodies also suggested that governance arrangements were effective.

¹⁹ New Horizons: Responding to the Challenge of the 21st Century- The Interim Report of the Joint Future Thinking Taskforce on Universities, Scottish Government, 2008

²⁰ HESA, Destinations of Leavers from Higher Education in the UK 2009/10

²¹ Schofield A, What is an Effective and High Performing Governing Body in UK Higher Education. 2009. pp. 9-15

3. Recommendations

Section 2 of this document describes a governance system which is in a process of continuous improvement and which is perceived to be robustly fit for purpose. However, every system is capable of improvement and Universities Scotland welcomes the opportunity which the Review presents to secure further evolution of university governance. Many of these improvements can be implemented by the sector itself through the development of a Scottish version of, or supplement to, the existing CUC guidance. Others will require consideration or action by other parties.

3.1 'Democratic accountability'

The Review's commissioning document includes several statements and propositions which might be conceived as looking at aspects of university governance which extend beyond the role of individual governing bodies. These include:

- 'whether current institutional governance arrangements in the higher education sector in Scotland deliver an appropriate level of democratic accountability given the level of public funding institutions receive';
- 'proposals for change which observe the benefits of an autonomous sector but will also consider the importance of full transparency';
- 'the purpose of university governance in Scotland in the 21st century'; and
- 'the current engagement of institutions with their communities and stakeholders and specifically... the case for a supervisory council or forum representing such interests, its make-up, its remit and the role it might play in improving institutional governance'.

Taken together, these elements of the Review's commission appear to be about whether the sector as a whole, as well as individual institutions within it, has appropriate arrangements in place to ensure transparency and 'accountability' in some form to the political and societal stakeholders who have an interest in universities' contribution to Scotland's economic, social and environmental wellbeing. This goes beyond formal governance and accountability arrangements into the wider issue of how universities exercise their 'moral accountability' as major players in Scotland's civic life.

Universities are already 'democratically accountable' for their use of the proportion of their resources which are voted to them, through the Scottish Funding Council, by the Scottish Parliament. Section 2 sets out these exhaustive accountability mechanisms which, as a necessary protection of universities 'responsible autonomy', are built around accountability to the Scottish Funding Council as an apolitical statutory authority, and the separate accountabilities which universities have to other funders, nationally and internationally. Additionally, the Principals of universities are appointed as Accountable Officers and may be summoned by Scottish Parliament Committees to account for their stewardship of public resources.

Universities Scotland would be deeply concerned if 'democratic accountability' was interpreted by the Review as meaning increased direct accountability to elected politicians. This would be at odds with the responsible autonomy which is outlined in Section 2 as one of the fundamental features of successful university sectors internationally, with the entrepreneurship which is necessary for universities' success, and consistent with the exercise of academic freedom which, already protected by legislation, includes the capacity to be a constructive and challenging voice in civic debate without fear of political retribution.

There would also be risks to elected politicians if universities became more directly controlled by or accountable to politicians – for instance the wide range of technical and sometimes contentious issues

dealt with by the SFC would become matters of political controversy, and Ministers would become accountable to Parliament for the range of difficult and contentious decisions which universities have to make. Charitable status, and the capacity of universities to attract charitable and philanthropic support, would be put at severe risk by increased political control of universities.

As a major part of Scotland's public life, universities do however recognise that they are part of a wide web of mutual accountability between the various entities and communities which work together for our national and local wellbeing. These are principally relationships of constructive engagement rather than ones of formal accountability. For instance:

- National level: Section 2 and Annex B detail the existing formal accountabilities. In addition, and at a less formal level, the sector collectively relates to government and wider stakeholders through representative organisations including Universities Scotland and the Committee of Scottish Chairs. These representative relationships give the sector capacity to negotiate collectively (where agreed by individual member institutions) about the contribution which the sector can make to Scotland's wellbeing and the policy and funding environment which can best support this.
- Local/ regional level: Universities are key players at local and regional level in a range of roles including their status as major employers, as forces for economic growth, and as gateways to lifelong learning. At a formal level, some universities (particularly the ancients) have elected members of a local authority as *ex-officio* members of their governing bodies. A range of universities are members of the Community Planning Partnerships which bring together publicly-funded bodies to ensure complementary local/regional action to secure social and economic benefits. The NHS at national and local level is a key partner for all the universities which are engaged in the education of health professionals, and all universities are engaged in various ways with their local authorities, the enterprise agencies and other statutory and voluntary partners in the wellbeing of their communities.
- Internally: There are various existing levels of elected and appointed representation within universities which ensure that diverse voices have a part in decision-making appropriate to the individual institution's particular mission. Such members include the members of governing bodies elected by staff, students, or alumni that some commentators have focused upon, but are no means limited to such. The democratic function is also fulfilled by means of elected members of Senate; elected members of staff committees, elected members of staff-student liaison groups, elected class representatives, representation on school and faculty management groups, convocations, general councils and other such bodies very many of which report to, or can bring business to, the governing body itself.

Universities Scotland regards the formal mechanisms of accountability as proportionate in regard to the level of the sector's reliance on public funding, and with regard to the protection of autonomy in the interests of universities' successful contribution to Scotland. However, there are issues which are worth further exploration.

'Purpose' of university governance

Arguably, existing guidance on university governance is fully sufficient in covering the responsibilities of governors to their institutions, but relatively light in reference to universities' responsibilities as major forces, working with other stakeholders, in the attainment of social, economic and cultural benefits for Scotland and for their communities.

This wider accountability is referred to briefly at paragraph 7 of the CUC guidance which says that ‘the chair shall ensure that the institution is well connected with its stakeholders’. Universities’ individual mission statements make recognition of this wider societal context and can be found at [Annex D](#).

Recommendation 1: Supplementary Scottish guidance for universities should be developed by Universities Scotland, SFC and the Committee of Scottish Chairs which makes more specific reference to the need for university governance to take account of the contribution which universities make, along with wider stakeholders, to the achievement of economic, social and cultural wellbeing.

Networks of mutual accountability: national level

While the formal mechanisms of accountability for good governance and the efficient use of public money are exhaustive and proportionate, arguably there is less explicit current recognition of the ‘social contract’ that universities will deliver societal benefits in return for public investment.

This may underlie the suggestion of a ‘supervisory council of forum’ representing community and stakeholder reactions. Universities Scotland understands the intention to be the formation of a body of this nature at national level. We do not see a role for a supervisory council for reasons including the following:

- It is crucial that nothing is done which undermines the autonomy of institutions, the benefits of which are set out in section 2 of this submission
- It would be extremely damaging to do anything which undermined the absolute responsibility of the governing bodies of universities for their good governance. Effective governance can only be delivered by people who understand that they bear this absolute and undiluted responsibility, with no possibility for ‘diluting’ that responsibility by sharing it with some national council or forum. A supervisory council would inevitably lead to responsibility being ‘fudged’, raise issues of legal liability, and will do real damage to universities’ capacity for clear, decisive and accountable decision-making
- Universities are already well networked with key community and stakeholder representatives at national level, e.g. through individual institutional relationships, through engagement with the SFC and SDS, UCU Scotland & NUS Scotland, through engagement in the Industry Advisory Boards and through Universities Scotland’s relationship with key national stakeholders. Universities are not formally ‘accountable’ to other stakeholders any more than those other stakeholders are formally ‘accountable’ to universities, but we exist in an environment characterised by mutual dependence. We are open to further exploration of how these relationships might be enhanced, in recognition of the wide community and stakeholder interest in the benefits which universities deliver for Scotland.

On this latter point, there is already a strong trilateral link between universities, the Scottish Government and the SFC through the Tripartite Advisory Group (TAG) which was established through New Horizons and which has proved to be a useful and particularly effective forum for resolving operational issues about how best to support universities’ contribution to Scotland’s success. While Universities Scotland believes that wider community and stakeholder relationships are currently being managed effectively, we recognise the strong interest which a range of national stakeholders have in universities’ contribution, and the role of effective mobilisation of coherent action by multiple stakeholders including universities to address the challenges and opportunities facing Scotland.

Without detriment to existing relationships, we see merit in exploring the formation of a Ministerially-convened stakeholder forum to help enable this collective mobilisation of action. This forum could only be advisory to Ministers and to the range of parties (including universities) involved – the creation of an entity which assumed any executive or governance powers over universities would be

profoundly damaging to good governance and autonomy, and would create an imbalance in the relationship between stakeholders who need to be working collegially for Scotland's benefit. Its membership, building from existing examples including the recent useful and productive Higher Education Summits convened by the Cabinet Secretary, would have to balance Government, university leadership, SFC, industry and enterprise, university staff and the student voice and the interests of partners in the wider learner journey.

Universities are committed to demonstrating how public investment in universities secures economic, social and cultural outcomes for Scotland. A further issue which was explored following the New Horizons report was the concept of 'outcome statements' detailing universities' contribution to economic, social and cultural wellbeing. This was, in part, recognition that existing formal accountability mechanisms were good at demonstrating efficiency and propriety in the use of public funding, but perhaps less explicitly geared towards the demonstration of the delivery of societal benefits. After detailed examination, Universities Scotland, SFC and Scottish Government reached the view that it was highly problematic to try and define the relationship between individual universities' activities and the achievement of national outcomes. The preferred approach was the aggregation at national level of a detailed set of indicators of universities' economic, social and cultural contribution which was developed by Universities Scotland with independent economic advice during 2010. There would be merit in periodically revisiting this in a way which was agreed by Scottish Government, the SFC and universities themselves which could inform stakeholder discussion of the coherent mobilisation of contributions.

Recommendation 2: Universities Scotland, SFC and Scottish Government should agree a framework for the periodic updating and publication of indicators of universities' economic, social and cultural contribution, building on existing structure such as the Tripartite Advisory Group (TAG) and the sector-level outcome statement

Local networks

As set out above, universities are already well connected into local and regional stakeholder networks and communities, including through their relationship with elected local government. A couple of areas may, however, be worth further examination.

Universities are often but not yet always formally involved in Community Planning Partnerships or their supporting structures. It would be worth exploring whether increasing universities' involvement in these key mechanisms for the coherent mobilisation of key publicly-funded bodies at local/ regional level would add value and, if so, the practicalities of delivery (for example for institutions with multiple campuses or dispersed geography such as the University of the West of Scotland, University of the Highlands & Islands or the Open University which may otherwise have a large number of such local and regional planning structures with which to engage).

Recommendation 3: The Review should consider whether universities should give consideration to relevant Community Planning documents in their strategic planning processes.

The depth of universities' involvement with local communities is not something which is apparent from current formal reporting mechanisms. It may be worth exploring whether there is more which could be done, e.g. in relation to the inclusion of suitable material/ indicators in universities' strategic plans or annual reports, to ensure that this role is explicit and apparent.

Recommendation 4: The Review should consider whether universities' engagement with local

stakeholders and communities should explicitly be reflected in the SFC's planning guidance to institutions.

Internal networks

Section 2 of this submission demonstrates the extensive participation of staff and students in the decision-making structures of all universities. Elected and appointed governing body members from the internal community of staff and students (past and present) account for 41% of governors at Scottish universities. This practice provides staff and students with a significant voice in the strategic direction and ultimate decision-making body of Scottish universities. At many institutions, there is also representation of staff and student members on key committees of Court which deal with appointment of members and funding issues. Scottish universities are committed to this collegial style of governance that involves staff and students in the decision making process and this is evidenced by the already high proportion of internal representation on governing bodies.

Where not required, the establishment, purpose and membership of university committees is a matter for the autonomous decision of the relevant institutions. There may, however, be value in developing supplementary Scottish guidance, additional to existing CUC guidance, which defines best practice in the inclusion of student and staff representatives in key governing body committees. This could be implemented on a 'comply or explain' basis as part of universities' accountability to the SFC. For instance, existing best practice in the inclusion of staff and student members of governing bodies on committees of the governing body with responsibility for key strategic decisions, or for the appointment process for Principals could be specified as the norm in guidance.

Recommendation 5: Supplementary Scottish guidance for universities should be developed by Universities Scotland, the SFC and the Committee of Scottish Chairs which defines the best current practice as the norm for inclusion of students and staff in key decision-making committees of Court.

Transparency

The transparency of university governance is already assured by multiple means including the formal accountability mechanisms already described, the routine web publication (by most universities) of the papers of key decision-making bodies wherever possible, and the participation of a diverse membership on key decision-making bodies. One stakeholder has, however, commented on occasional difficulty in finding details of governing body membership, and therefore on the difficulty of making representations to governing bodies.

Recommendation 6: Supplementary Scottish guidance for universities should be developed by Universities Scotland, the SFC and the Committee of Scottish Chairs which ensures that all universities comply with best practice in making the decisions of governing body and key decision-making committees conveniently accessible on the internet, except where freedom of information/data protection issues require their non-disclosure.

Recommendation 7: This guidance should also require that the names of all governing body members should be accessible on the internet, perhaps in a central location, together with details of how to make representations to governing bodies.

3.2 Effectiveness

Appointment of governing body members

Universities Scotland is not aware of any suggested deficiency in the process for appointing members of governing bodies. Nonetheless, there is an increasing body of good practice in the appointment of members to boards in the public sector and beyond. The Leadership Foundation for Higher Education already draws attention to the relevant elements of guidance on public appointments.²² This includes a number of norms including clear definition of the required competencies, open advertisement, the formation of boards with diverse skills and backgrounds, and the involvement of external persons in key appointments. While the full OCPAS process for public appointments has proved inflexible and is unsuited to non-Ministerial appointments, these key norms represent practice which should inform appointment processes. The appointment of the Chair is particularly key, and should be subject to a transparent process in accordance with these norms.

Recommendation 8: The supplementary Scottish guidance referred to above should require the application of best practice standards to appointment of Chairs and members of governing bodies, including clear definition of the required competencies, open advertisement, the formation of boards with diverse skills and backgrounds, and the involvement of external persons in key appointments.

Induction/training of governing body members

Section 2.4.5 refers to existing induction/ training arrangements. Universities already (and will need to continue to) run bespoke induction and training programmes specific to the particular institutional context in which their governing body members are required to exercise oversight. At a sectoral level, LFHE provides guidance and training for members of governing bodies, and the Committee of University Chairs publishes the *Guide for Members of Higher Education Governing Bodies in the UK*. However, in view of the increasing differentiation of the sector either side of the border, it may be worth exploring the establishment of a specific Scotland-wide programme on the principles and practicalities of exercising good governance in which new governing body members might be enrolled. For example, Scotland's Colleges contracts with the Institute of Directors in order to provide such training for governing body members.

Recommendation 9: Universities Scotland, the Committee of Scottish Chairs, the SFC and the Leadership Foundation for Higher Education (LFHE) should develop specific Scotland-wide induction and training support for members of governing bodies.

Effectiveness reviews

Section 2.4.8 discusses governing bodies' effectiveness reviews. All governing bodies in Scotland have already adopted the practice of conducting regular effectiveness reviews. These consider not only the governing body but also, and importantly, relationships with Senates (or Academic Boards) which are the bodies primarily responsible for academic decision-making, normally including subject-coverage, course portfolios, research strategies and so forth. This is an area where practice is evolving with input from the LFHE and CUC.

Recommendation 10: The supplementary Scottish guidance referred to above should strengthen effectiveness reviews by requiring the application of emerging best practice, including the involvement of external members.

3.3 Appointment of Principals

²² See <http://www.lfhe.ac.uk/governance/bodymembership/recruiting.html>

The appointment of the Principal is a key responsibility of the governing body. Unless the governing body is fully responsible for the appointment, performance management and termination of employment of the Principal, it cannot be responsible for the overall effectiveness and good governance of the institution. A 'supervisory council' cannot have a role in this without fundamentally undermining the responsibility and accountability of the governing body. Recommendation 5 deals with staff and student involvement in key governing body decisions about this. Additionally, it would be consistent with modern best practice in the sector and beyond for the selection panels for Principals to involve a member who is external to the university, to ensure a breadth of perspective and help to secure the transparent integrity of the selection process.

Recommendation 11: The supplementary Scottish guidance should establish as a norm that external assessors should be involved in the selection panels for Principals.

3.4 Rectors

Some elected rectors are outstanding advocates for students and their institutions, and effective chairs of their governing bodies. Others have been less fully engaged, and have chosen not to chair the governing body. However good the individual rector is, there is a potential conflict of interest between their role as the advocate for the student voice and their governance responsibility for the institution as chair of its governing body. The Dearing Review's Scottish Committee dealt with the issue as follows in 1997:

The role of the chairman of the university Court is central to setting the institutional agenda and promoting its strategic aims. The individuals elected to serve in this capacity must be able to do so proficiently and in the best interests of a multiplicity of interested constituencies, including staff and students and, above all, the institution as a whole. The current position is, therefore, too haphazard to ensure that these crucial aims are met.

We have taken advice on this matter from the four ancient universities and noted that all university Courts now have permanent student representation. We consider the Rector is a valuable asset to Court, and therefore should be retained, to act, as originally envisaged, as a spokesperson for students. However, we believe that the office of Rector should no longer be linked automatically to the chairmanship of the University Court. We believe that the chairman of Court should more properly be elected by all members, and we agree with the National Committee that this should be for a period of no longer than three years, renewable for three years. If satisfying the criteria for eligibility, the Rector could, of course, stand for election to the position of chairman.

We recommend to the four Scottish ancient universities and to the Government that the office of Rector should no longer be linked to the chairmanship of the University Court, and that the appropriate legislation should be enacted to support this change in institutional governance.

While Universities Scotland is not proposing that this change should now be implemented, we do not believe that it would be consistent with modern good governance for further roles to be created where the rector is chair of the governing body. There are significant risks to universities and their communities where elected rectors choose or are unable to (a recently elected rector was imprisoned overseas the entire term of office) attend governing body meetings.

There are only five Scottish Universities which retain the historic role of rector, in its traditional form.²³ Amongst these five, there is no single model for the election of the Rector (at the University of Edinburgh staff, as well as students, comprise the electorate) nor in their role on the governing body and the case for creating more Rectors is unclear. All modern universities – and almost all HEIs in Scotland²⁴ – provide staff and students with a “direct” voice on their governing bodies. In general this works well and students are engaged effectively in the governance process and highly capable of performing the role of governor. It is not self-evident that Rectors would represent the concerns of students better than students themselves.

Recommendation 12: We do not see the case for further extension of the current model of Rector and recommend that the Review does not give this further consideration.

3.5: A single statute?

It is not entirely clear in the abstract whether a single statute would help or hinder universities in pursuing their objectives or promoting and securing good governance. The potential advantages and possible disadvantages are unclear. A full and reasoned response can be made only when there is an outline proposal to consider. As a matter of principle, a highly diverse university sector will continue to require diverse governance arrangements reflecting the different scales and missions of institutions. Universities Scotland’s members are of the opinion that a single statute has the potential to undermine this diversity which reflects and respects different missions, traditions and constituencies, particularly in relation to the Small Specialist Institutes. A single statute might also introduce significant inflexibility for governing bodies and inhibit the pace of change for any amendments to governance arrangements that institutions, as autonomous bodies, might wish to consider.

The process of developing a single statute for the Scottish Higher Education sector would require a significant amount of time and resource from institutions, the SFC and from the Scottish Government. Before embarking upon such an undertaking, there would need to be a clear demonstration to all relevant stakeholders that any benefits of a single statute would be likely to justify such effort, particularly at a time when current resources are already stretched.

Recommendation 13: We do not see a compelling case for the development of a single statute. We recommend that the Review does not give this further consideration at this stage.

3.6: Regulatory regime

The current level of regulation and accountability that higher education institutions are subject to is highlighted at subsection 2.2 above and in [Annex B](#). The UK Government is currently pursuing a policy of deregulation of the higher education system in England and the Higher Education Better Regulation Group (HEBRG) has been commissioned to carry out work to identify ways of simplifying the complex legislative landscape. If such work leads to relaxations in the regulatory regime for English institutions that are not mirrored in Scotland then Scottish institutions could be placed at a disadvantage.

Recommendation 14: We would welcome the opportunity to work more closely with the Scottish

²³ University of Edinburgh, University of Glasgow, University of St Andrews, University of Aberdeen, and University of Dundee

²⁴ The Scottish Agricultural College is unusual in that it is a private company limited by guarantee as well as a fundable body and a higher education institution. Its corporate governance policies were thoroughly revised in 2005 to ensure the implementation of best practice, They were externally reviewed again in 2007 and found to be sound.

Government to ensure that Scottish institutions are not placed at a competitive disadvantage by relaxations of the regulatory regime for higher education institutions in other parts of the UK.

3.7: Diverse arrangements for diverse needs

Whilst the underlying principles of good governance must obviously apply to all HEIs, not all of the specific recommendations made in the preceding text are necessarily relevant or appropriate to the circumstances of the three Small Specialist Institutions (Glasgow School of Art, the Royal Conservatoire of Scotland and the Scottish Agricultural College). We would therefore recommend that the governance arrangements pertaining to these particular HEIs are considered separately from the universities.

Recommendation 15: Whilst the underlying principles of good HEI governance must apply to all HEIs, because of their specialist subject areas and stakeholder communities, and also their specific operational needs, the specific governance arrangements for the Small Specialist Institutions (SSIs) should be considered separately, to ensure relevance, proportionality and fitness for purpose.

Annex A

CUC 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. It is recommended that institutions should report in the corporate governance statement of their annual audited financial statements that they have had regard to the Code, and that where an institution's practices are not consistent with particular provisions of the Code an explanation should be published in that statement.

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 designated 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.

Annex B

Accountability and regulation of Scottish higher education institutions

At present, universities in Scotland are subject to a wide range of formal oversight and reporting requirements led by a number of statutory bodies including, but not restricted to, the following organisations:

The Scottish Funding Council (SFC)	
<ul style="list-style-type: none"> Financial memorandum 	<p>The financial memorandum²⁵ sets out the formal relationship between SFC and the institution. The foundation of the relationship is provision of funding by the Council to the governing body of the institution, according to statute. Institutions are subject to a long list of requirements upon which funding from SFC is conditional.</p> <p>Essentially, the institution undertakes to adhere to the Council's mandatory requirements²⁶ (as notified to the institution in circular letters) and to take account of relevant good practice in the management of all its activities and resources including its:</p> <ul style="list-style-type: none"> staff, human resources and industrial relations practices; estates and equipment; and finances, and risk and internal control procedures.
<ul style="list-style-type: none"> Statement of recommended practice (SORP) 	<p>All UK funding bodies require an annual accounts direction. In all cases these accounts directions require institutions' financial statements to be prepared in accordance with the Statement of Recommended Practice (SORP).²⁷ The accounts direction also provides information about those disclosures required by the Funding Bodies over and above those required by the SORP and Generally Accepted Accounting Practice (GAAP). These disclosures usually include items such as a statement of corporate governance, the emoluments of the vice chancellor or principal, the number of higher paid staff, and details of any compensation for loss of office paid to higher paid staff. The SORP allows institutions across the UK to provide consistent and comparable financial information to a range of stakeholders and other interested parties, demonstrating and enhancing their public accountability for their use of public funds.</p>
<ul style="list-style-type: none"> Conditions of Grant 	<p>Any public funding received from SFC is conditional on the institutions' governing bodies and designated officers complying with the terms of the Financial Memorandum (see above)</p>

²⁵ http://www.sfc.ac.uk/effective_institutions/financialmemorandum/financial_memorandum_jan_06.aspx

²⁶ http://www.sfc.ac.uk/effective_institutions/financialmemorandum/mandatory_requirements.aspx

²⁷ www.hesa.ac.uk/dox/datacoll/fsr_general/sorp07.pdf

	A number of specific conditions are usually attached to individual grants, such as Capital Finance funding. ²⁸
<ul style="list-style-type: none"> • Audit and Accounting 	The funded institution's governing body is required to establish an Audit Committee and carry out internal audits, in addition to commissioning external audits.
<ul style="list-style-type: none"> • Quality Review/QAA 	<p>SFC's quality arrangements²⁹ with regard to Scotland's universities include:</p> <ul style="list-style-type: none"> • Internal Review – Institutions must ensure that all subjects and aspects of provision are included in institution-led review activities over a cycle of not more than six years. An annual report is provided to SFC by each institution. • Enhancement-led Institutional Review (ELIR) – SFC relies upon the Quality Assurance Agency for Higher Education in Scotland (QAA) to carry out independent, external review of institutional systems for quality assurance and enhancement. Review teams include senior academics, an international reviewer and one student reviewer.

Other Funding Bodies

<ul style="list-style-type: none"> • Accountability for public and private funds 	Bodies that distribute funding to a range of organisations. These bodies include, but are not limited to, the seven UK Research Councils, The European Commission, the British Academy, The British Council, the Carnegie Trust, the Caledonian Research Foundation, The Esmee Fairbairn Foundation, the Fulbright Commission, the Jerwood Foundation, the Joseph Rowntree Foundation, the National Endowment for Science, Technology & the Arts, The Novartis Foundation, The Nuffield Foundation, The Royal Academy of Engineering, and The Royal Society
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The Scottish Public Service Ombudsman (SPSO)

<ul style="list-style-type: none"> • Complaints handling 	The Scottish higher education sector comes under the remit of the SPSO. In addition to this, the SPSO's ability and intention to impose a model complaints handling procedure across the sector, granted by the Public Services Reform (Scotland) Act (2002), will require universities to comply.
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The Office of the Scottish Charity Regulator (OSCR)

<ul style="list-style-type: none"> • Accountability 	All Scottish universities are registered charities in Scotland and subject to the regulation requirements of OSCR, including the submission of annual accounts, an annual return and supplementary monitoring return. OSCR also has the power of enquiry and intervention should any issues of non-compliance or
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²⁸ http://www.sfc.ac.uk/effective_institutions/financialmemorandum/mandatory_requirements.aspx

²⁹ http://www.sfc.ac.uk/effective_institutions/qualityassurance/quality_scotlands_universities.aspx

mismanagement/misconduct arise.

The Office of the Scottish Information Commissioner (OSIC)

- Freedom of Information

Scottish higher education institutions are subject to the Freedom of Information (Scotland) Act (2002). The requirements of this Act continue to create an additional bureaucratic and financial burden on institutions. An recent analysis by the Scottish Government on the costs they incurred when responding to FoI requests found that:

- The average staff cost of responding to a Freedom of Information request was £189 and average staff time taken was seven hours and 22 minutes
- The average staff cost of responding to a review was £292 and the average staff time taken was eight hours and 35 minutes
- The average staff cost of responding to an appeal was £720 and the average staff time taken was 21 hours 25 minutes

The UK Borders Agency (UKBA)

- Points-based immigration system

The higher education sector is subject to a very high level of regulation in relation to immigration. This accountability burden has recently increased with changes to the points-based immigration system being introduced by the UK government.

At a UK-level, there are plans to conduct research into the accountability burden on HE providers associated with the points-based immigration system. This relates specifically to Tier 4 and the operation of the sponsorship management system.

Audit Scotland

- National Performance Audits

Since Scottish Statutory Instrument 2010/389 was laid before the Scottish Parliament, all Scottish higher education institutions have come under the purview of the Scottish Auditor General. From 20 December 2010, The Public Finance and Accountability (Scotland) Act 2000 (Economy, Efficiency and Effectiveness Examinations) (Specified Bodies etc.) Order 2010 (formerly 2004) has applied to “institutions formerly eligible for funding by the Scottish Higher Education Funding Council in schedule 2 to the Further and Higher Education (Scotland) Act 2005.”

This means that [section 23\(1\)](#) of the Act whereby, “The Auditor General may initiate examinations into the economy, efficiency and effectiveness with which bodies and office-holders mentioned in subsection (2) have used their resources in discharging their functions” applies fully to all Scottish higher education institutions.

The Higher Education Statistical Agency (HESA)

<ul style="list-style-type: none"> Statutory data returns 	<p>HESA is the central data collection and provision agency for UK higher education. The agency has collected data from UK higher education institutions since 1994/95, creating national data bases from these collections from which information is supplied to statutory customers who include the UK funding councils and research councils.</p> <p>HESA acts on behalf of the sector to enable it to meet the statutory data requirements of funding bodies and government departments. HESA collects data on students, staff and finance and graduate destinations.</p> <p>Data sets collected by HESA are:</p> <p>HESA Student HESA Aggregate Record for Students Studying Wholly Overseas HESA Staff HESA Finance HESA Destination of Leavers HESA Destination of Leavers Longitudinal Survey HESA Non-Credit Bearing (NCB)</p>
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Other Statutory reporting
<p>A broad category that covers statutory reporting that is not specific to HE; includes Companies House, pensions, local councils, equality, energy, and reporting relating to specific controlled substances and scientific procedures.</p>

Non-Statutory reporting requirements
<p>A broad category for optional returns, including data supplies to press/media, sector bodies, and optional accreditation bodies; also includes benchmarking surveys.</p>

The Higher Education Better Regulation Group (HEBRG)

The Higher Education Better Regulation Group (HEBRG) was established at a UK level in 2010 as the successor to the Higher Education Regulation Review Group (HERRG) in order to address changing public and political attitudes towards accountability and the evolving regulatory landscape. Its membership is inclusive of higher education funding bodies, regulators and representative bodies from England, Scotland, Wales and Northern Ireland. HEBRG exists to build on the work of HERRG in reducing the regulatory burden on the HE sector as the regulatory demands on institutions remain high and complex. New demands are constantly being made and there is always the risk of duplicate requirements and unnecessary complexity.

Universities Scotland takes the view that the combined monitoring and assessment carried out by the bodies listed above provides a very substantial and robust public interest test and that significant additional requirements would have a detrimental effect on the Scottish higher education sector as a whole and would be in direct opposition to HEBRG's stated aim of reducing the regulatory burden on institutions.

Recent work that HEBRG has either taken forward itself or contributed to has shown that the UK higher education sector is subject to approximately 550 separate lines of external reporting³⁰ and is engaged with at least 130 professional, statutory or regulatory bodies (PSRBs)³¹ that allow institutions to confer certain professional or academic accreditations. The nature of the regulatory and accountability relationships between PSRBs and autonomous higher education institutions (HEIs) is varied and complex.

30 A sector-wide Survey of Statutory and External Returns 2010, undertaken by the Higher Education Statistics Agency (HESA), Association of Heads of University Administrators (AHUA) and University and Colleges Information Systems Association (UCISA) on behalf of HEBRG. Early findings were announced at the HEBRG Conference on 9 December 2010.

31 <http://www.hebetterregulation.ac.uk/OURWORK/Pages/Professional,StatutoryandregulatoryBodies%28PSRBs%29.aspx>

Annex C

Scottish Higher Education Institutions by recognised type

Ancient Institutions	<ul style="list-style-type: none">• The University of Aberdeen• The University of Edinburgh• The University of Glasgow• The University of St Andrews
Pre-1992 or 'Chartered' Institutions	<ul style="list-style-type: none">• The University of Dundee• Heriot-Watt University• The University of Stirling• The University of Strathclyde
Post-1992 Institutions	<ul style="list-style-type: none">• The University of Abertay Dundee• Edinburgh Napier University• Glasgow Caledonian University• University of the Highlands and Islands• Queen Margaret University• The Robert Gordon University• The University of the West of Scotland
Small Specialist Institutions	<ul style="list-style-type: none">• The Glasgow School of Art• The Royal Conservatoire of Scotland• The Scottish Agricultural College
Other	<ul style="list-style-type: none">• The Open University in Scotland

Annex D

HEI Mission Statements

HEI	Mission Statement
The University of Aberdeen	<i>Our mission is to be recognised throughout the world as a renowned international university, focussing on society's future needs and challenges, employing the best staff and delivering a unique and stimulating intellectual experience for students</i>
The University of Abertay	<i>Our mission is to provide a distinctive and high-quality university education that empowers our graduates socially, culturally and economically, and to generate new knowledge and learning that reinforces national competitiveness.</i>
The University of Dundee	<i>To advance and diffuse knowledge, wisdom and understanding by teaching and research and by the example and influence of its corporate life.</i>
The University of Edinburgh	<i>The University's mission is the creation, dissemination and curation of knowledge</i>
The University of Glasgow	<i>to undertake world-leading research and to provide an intellectually stimulating learning environment, thus delivering benefits to culture, society and the economy.</i>
Glasgow Caledonian University	<p><i>Our mission as a University is to provide an outstanding inclusive learning environment underpinned by curiosity driven research allowing us to:</i></p> <ul style="list-style-type: none"> <i>•share our knowledge and expertise;</i> <i>•work in partnership with business, the professions and the public sector;</i> <i>•create successful global graduates and citizens and deliver economic and social benefit for the communities we serve.</i> <p><i>Our University is value-oriented and goal-directed.</i></p>
Glasgow School of Art	<i>To provide world class creative education and research in architecture, design and fine art which makes a significant economic, social, and cultural contribution.</i>

Heriot-Watt University	<i>n/a</i>
Edinburgh Napier University	<i>Our mission is to provide socially, culturally and economically relevant higher education to people who can benefit from it and to support student achievement. We will make available the product of our research and scholarship to businesses and organisations which are able to use our intellectual capital to become more effective and successful. We will do this without regard to social and cultural barriers and boundaries and will serve all of the communities we touch. We will value creativity and innovation in the pursuit of excellence. We will value the potential of every person. We will be accessible and flexible to deliver a high quality student experience to the widest possible range of students: to enhance learning, build confidence and create opportunity. We will value the skill and expertise of our staff and will support and reward their contribution to our success. We will value responsiveness and will be demand-led and customer-focussed. We will value partnership and will form strong and enduring collaborations where we can achieve more by working with others than we can alone</i>
Queen Margaret University	<i>Queen Margaret University's mission is to enhance the well-being of individuals and the communities we serve through socially and economically relevant education and research.</i> <i>This mission is enhanced by our strong commitment to economic, social and environmental sustainability.</i>
The Robert Gordon University	<i>We focus upon the contemporary needs of students, economies and societies. We're 'The Professional University'.</i> <i>'Professional' is our watchword for the way we treat all our stakeholders, including and especially our students. It guides the way we work together, and defines what we expect from each other.</i>
The Royal Conservatoire of Scotland	<i>To create in Scotland the international centre of excellence and innovation for learning, teaching and research, in and for performance, in which the quality of the student experience is paramount.</i>
The Scottish Agricultural College	<i>To enhance the the rural economy and environment</i>
The University of St Andrews	<i>The mission of the University of St Andrews is to achieve the highest international standards of excellence in scholarship, manifested in the quality of its research and of its graduates.</i>

The University of Stirling	<i>The University of Stirling is committed to the pursuit of world-class research and scholarship in order to inspire, challenge and support motivated individuals who want to shape their world.</i>
The University of Strathclyde	<i>From our foundation as a place of useful learning, we take it as our responsibility to research, teach and be of benefit to society – to reach outside the University to make the world better educated, prosperous, healthy, fair and secure. Our ambition is to be among the leading technological universities in the world.</i>
The University of the West of Scotland	<p><i>To provide distinctive higher education, through inspirational teaching and learning and research and knowledge transfer of national and international excellence, that transforms people and through them communities and organisations.</i></p> <p><i>To have a transformational influence on economic, social and cultural development across the West of Scotland, by providing high-quality, inclusive higher education and innovative applied research.</i></p> <p><i>We aim to inspire people to not only achieve to their full potential but to exercise leadership in their communities and professional lives. To do this we adhere to a set of values in all that we do, in applied research and knowledge transfer and in learning and teaching.</i></p>
The University of the Highlands and Islands	<i>To be a distinctive and innovative regional university of national and international significance: a university with a pivotal role in the educational, economic, social, cultural and environmental infrastructure of its region and which reaches out to the people of the Highlands and Islands and the rest of the world through its research and teaching.</i>
The Open University in Scotland	<p><i>We promote educational opportunity and social justice by providing high-quality university education to all who wish to realise their ambitions and fulfil their potential.</i></p> <p><i>Through academic research, pedagogic innovation and collaborative partnership we seek to be a world leader in the design, content and delivery of supported open learning. The Open University's mission is to be open to people, places, methods and ideas.</i></p>

Annex E

Financial memorandum

The financial memorandum has an effective date of 1 January 2006.

Preamble

1 This memorandum sets out the formal relationship between the Scottish Further & Higher Education Funding Council ('the Council') and 'the institution'. The foundation of the relationship is provision of funding by the Council to the governing body of the institution, according to statute.

2 The constitutional arrangements for the relationship are laid down in the relevant statutes and instruments of governance which establish the autonomy of the institution and the powers and duties of the Council.

3 For these arrangements to be effective the Council and the institution have to work in partnership to assist the delivery of the Scottish Executive's policies for further and higher education and to secure best value from the investment of funds derived from Scottish Ministers. The ultimate purpose of all these partnerships, policies and investments is to secure further and higher education in Scotland which meets the nation's economic, social and cultural needs by providing excellent learning opportunities for students and outstanding research. The Council recognises that the institution may also undertake activities and have to comply with legislation and regulation which fall outside the scope of this partnership.

Purpose of the memorandum

4 Accordingly, this memorandum sets out the expectations of the institution and the requirements which are a condition of the Council's funding. It also sets out the agreed expectations which the institution, in the spirit of constructive partnership, has a right to have of the Council.

What the institution can expect of the Council

5 The Council will conduct its affairs at all times to the highest accepted standards for public sector bodies. It will act reasonably on the basis of the fullest available evidence and objective analysis. Subject to any legal requirement to observe confidentiality, it will be open and transparent with the institutions it funds and other stakeholders, and will give or be prepared to give a public justification of all its decisions.

6 The Council will maintain a policy on openness which sets out the work of the Council, the services it aims to provide and how to complain or appeal if something goes wrong.

7 The Council will maintain regular and frequent dialogue with institutions and their representative bodies where it seems appropriate to:

- (i) promote a shared understanding of the aspirations, needs and concerns of the various stakeholders;
- (ii) support the beneficial impact of institutions' collaborative activities; and
- (iii) better enable it to provide the information, advice and assistance Scottish Ministers require of it.

8 The Council will not substitute its judgements for those which are properly at the discretion of institutions. In particular, the Council will seek to maximise the discretion of institutions to use grants provided by the Council.

9 In discharging its duty to monitor and publish the performance of the institution generally and on specific projects, the Council will, as far as possible, rely on the data and information used by the institution for its own purposes.

10 The Council will allocate and pay grant to the institution in accordance with current published policies and procedures. The institution will be consulted in advance and given reasonable notice of any significant change to these policies and procedures and of significant changes in overall funding levels.

11 The accountable officer of the Council is required to be satisfied that the institution has put in place the organisation and procedures necessary to ensure compliance with this memorandum, including the achievement of best value from funds derived from Scottish Ministers. The Council will obtain evidence from the institution, which will include undertaking reviews (but only by prior arrangement), to provide the assurances required to discharge this responsibility.

12 Where the Council has concerns or insufficient information to provide the assurance required, the Council will, in the first instance, seek to resolve matters with the chief executive officer of the institution. Where this has not proved possible, the Council's accountable officer will inform the chair of the governing body and the institution's chief executive officer in writing and without delay of any significant concern of the Council about the conduct of the institution. Only after such notification and where the circumstances warrant it, the Council's accountable officer may suspend the payment of any or all grants to the institution. Where the concern relates to the financial support which the institution receives (or might receive) from the Council, the Council may also use its powers to attend and address a meeting of the governing body.

What the Council can expect of the institution

13 The following paragraphs state the expectations of the institution and the requirements which are a condition of the Council's funding.

14 The Council must be able to rely on the whole system of governance, management and conduct of the institution to safeguard all funds of the institution deriving from Scottish Ministers and to achieve the purposes for which those funds are provided. As a recipient of public funds, the governing body of the institution will strive to achieve at all times good practice in the governance, management and conduct of the institution.

15 The governing body will ensure that it has in place and effectively implemented the proper arrangements for governance, leadership and management of the institution as required by statute, its instrument and articles of governance. This includes the appointment of the chief executive officer. As well as being directly accountable to the governing body for the proper conduct of the institution's affairs, the chief executive officer of the institution is also directly accountable to the chief executive officer of the Council for the institution's proper use of funds deriving from Scottish Ministers and its compliance with this memorandum.

16 Respecting the primacy of the institution's own statutory and constitutional obligations, the governing body will ensure that:

(i) there is effective planning and delivery of the institution's education programmes, research and related activities, in accordance with its mission;

(ii) it obtains sufficient data and information of a quality to enable it to determine how well the institution is achieving its goals across the full range of its activities and that the institution is adjusting its strategies as necessary for the delivery of these goals. Such information will be made available to the Council on request as necessary for the exercise of its statutory functions;

(iii) public funds are used in accordance with relevant legislation and only for the purposes for which they are given;

(iv) the institution strives to achieve best value from its use of public funds from all sources;

(v) the institution takes appropriate account of Scottish Ministers' priorities as expressed in the Council's further and higher education policies and drawn to the institution's attention by the Council;

(vi) the institution is actively engaged in seeking continuously to enhance the quality of its programmes and services and to involve students and other stakeholders in these processes;

(vii) there are in place up-to-date and readily accessible procedures for handling complaints by students, staff and others;

(viii) its and the institution's activities are conducted in an appropriately open, transparent and fully accountable manner;

(ix) the institution plans and manages the deployment of its resources in a sustainable way;

(x) it and the institution adheres to the Council's mandatory requirements (as notified to the institution in circular letters) and that the institution takes account of relevant good practice in the management of all its activities and resources including its:

- staff, human resources and industrial relations practices;
- estates and equipment; and
- finances, and risk and internal control procedures.

17 The chief executive officer of the institution must inform the accountable officer of the Council without delay of any circumstance that is having or is likely to have a significant adverse effect on the ability of the institution to maintain its capacity to deliver relevant education programmes, research and related activities.

Annex F

CUC Guidance on the role of the Secretary

- 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.*

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.

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.