A guide to governance in church higher education institutions

A project commissioned by the Council of Church Colleges and Universities
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Church colleges and universities have a distinguished record of service to education and society reaching back over 150 years. Central to their work is a commitment, derived from their history as Christian foundations, to offering a caring environment in which students and staff can flourish.

Members of the governing bodies of church higher education institutions (HEIs) play a central role in upholding and supporting the distinctive ethos and vision of these institutions. To do this, they need to understand their role as guardians of the institution’s mission which stems from its foundational documents. Although there are other publications that provide information and advice on effective governance, none of them tackles the distinctive issues that face governors and leaders of church HEIs. This report, commissioned by the Council of Church Colleges and Universities, is designed to fill that gap and to complement existing publications relating to governance and leadership in higher education.

I am grateful to the many people who have assisted with the production of this report and in particular to Dame Janet Trotter, the then Vice-Chancellor and Principal of the University of Gloucestershire, David Setchell, chairman of the project steering group and Bill Taylor, project leader, for their contribution to the production of this report. The support of the Higher Education Funding Council for England (Leadership, Governance and Management Fund) in making this review possible is very gratefully acknowledged.

I commend this report to your attention in the belief that good governance, informed by and supportive of Christian values, will enable church colleges and universities to maintain and enhance their distinctive ethos and, thereby, serve the needs of their communities.

MICHAEL WRIGHT
Chairman of the Council of Church Colleges and Universities
Vice-Chancellor of Canterbury Christ Church University

August 2007
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• Two senior academics with research interests in the field
• Officers of the Higher Education Funding Council for England (Leadership, Governance and Management Fund team and Joint Advisory Committee for Church Universities and Colleges Secretariat)
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• The HEIs that contributed to the matrix of skills for governors in appendix 6
• Officers of GuildHE
• Mills & Reeve, Solicitors
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List of abbreviations
CCCU  Council of Church Colleges and Universities
CUC  Committee of University Chairmen
ECU  Equality Challenge Unit
GOR  Genuine occupational requirement
HEFCE  Higher Education Funding Council for England
HEI  Higher education institution
JACCUC  Joint Advisory Committee for Church Universities and Colleges
LGMF  Leadership, Governance and Management Fund
TDA  Training and Development Agency for Schools
UCEA  Universities and Colleges Employers Association
Bibliography
Works referred to in the text

ACAS guide
Religion or belief in the workplace: Putting the Employment Equality (Religion or Belief) Regulations 2003 into practice (ACAS 2004: ref ACAS/EEL01)

CUC guide
Committee of University Chairmen, Guide for members of higher education governing bodies in the UK (HEFCE, 2004/40, fourth edition)

CSR Group report
Church Schools Review Group (chair, Lord Dearing CB), The Way Ahead: Church of England schools in the new millennium (Church House, 2001: ref GS1406)

ECU report
Employing people in higher education: religion and belief (Equality Challenge Unit, September 2005)
See www.ecu.ac.uk/publications

Faith and secularisation

Mutual Expectations

Nolan report
Committee on Standards in Public Life (chair, The Rt Hon The Lord Nolan), Standards in public life (first report; London: HMSO, 1995, Cm 2850-1)

2003 White Paper
The future of higher education (London: HMSO, January 2003, Cm 5735)
Editor’s note

The fieldwork for this report was carried out during the period February to October 2006. The report was completed in November 2006 and unless stated otherwise reflects the position at that time both legally and with regard to nomenclature.
1.1 The publicly funded church colleges and universities in England play an important role in providing education for tens of thousands of undergraduate and postgraduate students. The distinctive nature of these institutions derives from their commitment to the Christian values and mission set out in their foundational documents. This report, commissioned by the Council of Church Colleges and Universities (CCCU), considers the aspects of governance which stem from their role as church foundations and sets out the particular challenges facing governing bodies seeking to maintain their institution’s distinctly Christian ethos.

1.2 The challenges facing church higher education institutions (HEIs) arise in part from the scale and pace of change within the higher education sector. They include the government’s intention, given in the White Paper *The future of higher education*, that 50 per cent of the population aged 18-30 should be participating in higher education by 2010; the amalgamation of church HEIs with non faith-based institutions; the changing legislative framework concerning employment and equal opportunities and the expression of diversity and faith, together with the increasing diversity of society. In this context, the particular challenges facing church HEIs include:

- observing the obligations arising from trust deeds, charity law and incorporation and ensuring that governors understand specific governance issues that derive from the institution’s position as a church HEI;
- finding candidates of suitable quality for the governing body and senior posts who meet the faith requirements set by institution’s constitution;
- fostering the mission of the HEI and maintaining those features that make it a distinctively faith-based institution, including chaplaincy, while respecting the diversity of society;
- if it so chooses, maintaining the genuine occupational requirement (GOR) for its chief executive and senior staff;
- maintaining close relationships with the church with which it is linked.

1.3 Members of governing bodies and senior management teams of church HEIs will find the report provides useful advice and information on these challenges. It supplements the fourth edition of the Committee of University Chairmen’s *Guide for members of higher education governing bodies in the UK* published by the Higher Education Funding Council for England (HEFCE) in 2004 (and henceforth referred to as the CUC guide). Members of churches and government institutions concerned with the governance of church HEIs will also find the material pertinent to their work.

1.4 The key findings which follow are based on a survey of current legislation, the governance documents of 14 church HEIs, visits to institutions, discussions with relevant organisations and specialist advice from Mills & Reeve, a law firm with wide experience in the higher education sector.

1.5 Although governance schemes differ, church HEIs share common values and objectives, which derive from their trust foundation documents (trust objects), historic traditions and their mission to integrate Christian values into their work.

1.6 Churches and faith bodies can legally nominate members of governing bodies. Members of governing bodies cannot, however, act as representatives of an external body and should work together to serve the interests of the institution.

1.7 All members of governing bodies are responsible for upholding the trust objects and mission of the institution, fostering its Christian ethos and supporting the work of the chaplaincy.
1.8 Governing bodies need to ensure that their membership takes account of the breadth of the institution’s work and the number and range of stakeholders in an HEI. In particular, churches should consider the need to propose individuals with the relevant knowledge and skills. Churches and nomination committees should consider the use of a formal matrix of skills needed by governors to help them identify and select new members. External appointments to committees provide a way of extending available expertise.

1.9 The appointment, induction and training of governors should take account of the need to support the institution’s mission and values.

1.10 Governing bodies are responsible for the strategic and corporate direction of the HEI. Members are not directly involved in curriculum issues, although they need to ensure that there are effective systems in place to provide them with reassurance about the nature and quality of the academic provision.

1.11 Both the governing body and the church should keep under review the mission and vision they share and should assess how effectively those aims are embedded in the institution’s dealings.

1.12 Governing bodies need to ensure that institutional policies and practices uphold the principle of ‘all faiths and none’.

1.13 Governing bodies of church HEIs should recognize the importance of the role of the chief executive in upholding its mission.

1.14 An HEI is free within the requirements of its trust deeds to decide whether to maintain the faith distinctive. Where it wishes to uphold a GOR, a governing body should understand the importance of preserving the requirement for their chief executive and support the integration of the faith distinctive in the full range of the institution’s work.

1.15 Vibrant chaplaincies are essential to maintaining the distinctive values and ethos of church institutions. Both the governing body and the church (denominational body) need to promote and support the role of chaplaincy.

1.16 Good relationships between the HEI and the church will be achieved more effectively, as Professor James Arthur has quoted in *Faith and secularisation* (with reference to the governance documents of the Australian Catholic University), ‘if close personal and pastoral relationships exist between university and church authorities characterised by mutual trust, close continuing co-operation and continuing dialogue.’ Good communication systems are essential to the maintenance of this relationship.
1.1 Churches have had a strong presence on the education map of the United Kingdom over many centuries. From about 1830 onwards, particular initiatives were taken by a number of denominational bodies in the area of teacher education, with new training establishments being founded – the last such being established as recently as the early 1960s.

While most people will be familiar with the particular contribution made by denominational schools, it is possible that they are less aware of the degree to which the churches are engaged in higher education.

1.2 Today there are 14 publicly funded church higher education institutions (HEIs) in England – fewer than at some other points in history – each playing a vital part as providers of graduate and postgraduate education to tens of thousands of students. The Council of Church Colleges and Universities (CCCU), which has commissioned this report, is a national body bringing together the leaders of these 14 institutions and linking with representatives from the Anglican, Methodist and Roman Catholic churches. The commitment and dedication to education of all those concerned is unequivocal.

Importantly, the interests of the denominations and the role of the churches in higher education is recognised in legislation (Further and Higher Education Act 1992, section 66 (3)) and the Higher Education Funding Council for England (HEFCE) has established the Joint Advisory Committee for Church Universities and Colleges (JACCUC) to advise the HEFCE Board. Moreover, the Training and Development Agency for Schools (TDA) has a statutory responsibility under the Education Act 2005 (see in particular section 5 (80, 97)) to have regard to ‘an appropriate balance in its financial support between institutions of a denominational character and other training providers’. The TDA is represented on JACCUC.

1.3 Half of the 14 institutions are universities, awarding their own taught degrees (and in some cases research degrees). Others currently operate as colleges of higher education, having established academic agreements with UK universities for the award of first degrees. Having said that, at the time of writing several institutions had lodged applications for powers to award taught degrees.

1.4 These institutions have active academic theology and religious education programmes; many of them have developed research activity in these areas. The Roman Catholic colleges have particularly close links with Roman Catholic schools, while the Anglican universities and colleges increasingly seek to support faith schools via closer links with dioceses and faith communities. Some institutions are involved in the task of ministerial formation and education. Some engage in the education of lay people better to equip them for work in the church.

1.5 All church HEIs have a chapel and chaplaincy team. While chaplains are appointed because of their support of the college’s faith position, the nature of the chaplaincy is changing as the institutions become more diverse. In some HEIs one of the roles of the chaplain is as the leader of a team of faith advisers which supports the increasingly diverse spiritual needs of both students and staff.

1.6 The church HEIs have a long record in the support of the whole student experience. Most encourage volunteering and have excellent student retention records. Given the number of courses with a vocational emphasis, it is not surprising that their employability statistics are good.

1.7 The church universities and colleges have a set of characteristics emerging from their missions which exemplify their values. These include commitments to widening participation, diversity, community regeneration (economically, socially and culturally) and to the holistic development of the individual within a learning community. Some are actively using these values to promote social justice more widely, not just within their local community.

1.8 It can be seen that the church universities and colleges are emerging in the twenty-first century as renewed and transformed institutions, capable of playing new roles in...
society that build on and develop their inheritance and traditions.

1.9 Interest in the governance arrangements of both business and academic institutions has grown over the past decade. Guidance on governance available to public sector HEIs was updated in November 2004. The church HEIs have fully espoused these developments and willingly submit to the auditing of their schemes of governance by HEFCE and others. Institutions acknowledge that they must be able to demonstrate that they are well governed, well managed and well led.

1.10 As well as issuing updated advice through the CUC guide, HEFCE itself has restructured to provide a strengthened emphasis on leadership, governance and management issues and has been party to the establishment of the independent Leadership Foundation for Higher Education (founded in March 2004).

1.11 The essential nature of the church institutions, historically springing from Christian trust foundations, makes them distinctive in governance terms. When viewed within the context of a challenging and changing modern higher education agenda, this distinctiveness has given CCCU some pause for thought. Hence this report. Moreover, as new universities have been established, trust deeds are giving way to corporate (limited liability) status – while at the same time maintaining the essential objects of the founding instruments – and significant changes are taking place in English law in matters such as employment, equality and diversity. In parallel, the churches and church HEIs have been seeking to give fresh expression to their historic partnership and the contribution they each make to the well-being of society.

1.12 There is then a challenge for the church HEIs and the church founding bodies concerning the very nature of their relationship. In summary:
• Foundation objects remain and are to be discharged.
• Independence and transparency are to be maintained within institutional governance schemes.
• General, legal and financial requirements must be met.
• Church HEIs must be enabled to operate in full ‘parity of esteem’ with other, competing, institutions within the sector.
• Inclusivity should be engendered.
• A high-quality student experience must be assured.

1.13 It was against this background that CCCU determined to seek an overview of the documents supporting governance in church HEIs – a task not previously undertaken – and to offer advice to governing bodies of its member institutions that would enable the HEIs and the authorities of the churches to reflect on present arrangements while retaining founding principles.

1.14 For its part, and in agreeing to support such a review via its Leadership, Governance and Management Fund (LGMF), HEFCE was concerned that any analysis should give attention to:
• the equality and diversity agenda;
• links, where appropriate, to the Leadership Foundation;
• whether the work would have any utility for other (small) HEIs.

1.15 Following the formation of a steering group to oversee the project, work has proceeded by way of a programme of visits and inquiry and review commensurate with the funds and time-scales allotted. Importantly, the conclusions at the end of this first stage of the exercise allow for more work in future, if deemed appropriate, via the officers of CCCU and on the basis of links now established.

1.16 CCCU appointed a project director for the work – a recently retired university college secretary – who undertook fact-finding visits to institutions based upon criteria agreed in advance by the steering group.

1.17 It is worth remarking that at the time the fieldwork was being undertaken:
• Five of the institutions were actively involved in a review of their governance documentation with legal advisers.
• A clear trend towards the incorporation of church HEI governing bodies was discernible. (Assuming a successful outcome to work currently in progress, ten of 14 will be incorporated).
2.0 The perceived need

In establishing this review, CCCU recognised the current scale and pace of change within the higher education sector and wished to consider it alongside some of the governance arrangements particular to church HEIs. Key elements of the change agenda were seen to include:

- government plans for growth in the sector (the 50 per cent participation rate);
- the introduction of variable tuition fees in 2006, producing changes in the market;
- the tradition of church foundation HEIs to extend their provision as widely as possible across the community so that individuals might attain their full potential;
- maintaining excellence in academic provision;
- clear statements of mission and ethos;
- the associated work and initiatives of church partners in faith schools (see, for example, the Church Schools Review Group report *The Way Ahead*) and in respect of employment issues (genuine occupational requirement (GOR));
- a changing legislative framework with regard to employment and equal opportunities and the expression of diversity or faith;
- a stated ‘faith’ position for key staff in church HEIs and some governing body members;
- ‘faith’ conditions attaching to some historic grants and loans made to these HEIs by church bodies. (See *Mutual Expectations*, annex I).

In relation to the governing bodies themselves, relevant elements of the change agenda are:

- the ‘extra layer’ of governance arising from the trust/foundation requirement;
- the move to incorporation as it impinges on historic trust documentation and foundation precepts;
- meeting the principles of objectivity and openness (see ‘The seven principles of public life’ given in the Nolan report) and in governance and other advice emanating from the CUC guide, including the requirement to provide a ‘Statement of Primary Responsibilities’ to HEFCE;
- a recognition that no two sets of church HEI governance documentation are the same!
3.0 Towards a supplement to the CUC guide

3.1 From the outset, it had been envisaged that this project would provide at least three very tangible outcomes for the benefit of governor members, including:
• a single source of authoritative guidance for church-related HEIs and their governors;
• evidence-based support for changes to practice in church HEI governance arrangements, as appropriate;
• guidance on the recruitment, selection, induction and training of governors of church-related HEIs;
• development of web-based resources for governors of church-related HEIs.

3.2 In order to achieve these outcomes, a wide-ranging conversation has taken place involving the institutions and church bodies. It is appropriate to record in this report significant elements drawn from these conversations, so as to give context and credence to the recommendations which follow.
Section B
A review of the issues
1.0 Governance

1.1 The governance documentation of the church HEIs, in common with that of the universities created after 1992, is founded upon a model Instrument and Articles document published by the then Department of Education and Science and operated through the Privy Council. For the church institutions, Instrument and Articles of government are overlaid on historic trust arrangements.

Previously designated (before 1988) as ‘direct grant’ institutions, the church HEIs were not categorised as Higher Education Corporations when the former polytechnics were incorporated under the Education Reform Act 1988. The church HEIs remain empowered under section 129 of the Act and are regarded as non-exempt charities (two, the University of Chichester and Roehampton University, are exempt charities). Most pre-1992 universities operate under somewhat different provisions as chartered institutions and have exempt charity status. This matter of charity status remains subject to review for all HEIs following consideration of the Charities Act 2006, which received Royal Assent on 8 November 2006.

1.2 Instrument and Articles of government are based on a model first set down in the 1960s. This allowed for some variation, with the Privy Council standing as gatekeeper ensuring that essential, core, provisions are present in approved schemes. As a rule of thumb it is suggested that, say, 90 per cent of any of the approved sets of Instrument and Articles will be made up of clauses taken directly from the model, with the remaining 10 per cent or so introduced by the proposing governing body. Clearly the fact that there is an approvals arrangement means that there is nothing in any set of Instrument and Articles which the Privy Council or (through their consultative processes) the Department for Education and Skills finds unacceptable.

It is important to record here that:
- having been founded on quite different sets of historic trust documentation, and
- with freedom to exercise some discretion under the 1960s instrument & articles model, and
- several having more recently moved to (Company Law) incorporation

the governance documents of the 14 institutions under review present a good measure of uniformity while allowing considerable diversity.

A short summary of governance documentation as collected over the period February—October 2006 is given in tabular format in appendix 2.

1.3 In the case of the church HEIs, any revision of the Instrument and Articles is likely to involve a consultation within the churches, possibly at local diocesan level or, in some instances, nationally. Indeed many extant articles of government for church HEIs make it clear that a change of certain provisions within them cannot be contemplated without the agreement of the church. In two cases (Canterbury Christ Church University and the College of St Mark and St John) the Memorandum and Articles of Association make provision for a ‘golden vote’ on the part of the church, covering key provisions which are designed to ensure the maintenance of the faith and foundation elements. Across the sets of Instrument and Articles (Memorandum and Articles of Association) reviewed, clauses designed to protect the position of the church include:
- the charitable objects;
- changes of (institutional) name;
- dissolution provisions;
- provision for the nomination of some governors or maintenance of a faith majority among governing body members or a faith majority in the quorum of the governing body;
- the form of religious worship and instruction;
- the position of the chief executive as a communicant member, practising Roman Catholic or practising member of a church which is a member of Churches Together in England and Ireland, in respect of appointment to his or her post and/or membership of the governing body;
• the chair of governors being in some way a church appointment – ordained or lay – possibly an ex-officio appointment having particular provisions specified in respect of governor retirement;
• that theology should be a part of the academic programme;
• the character of chaplaincy provision;
• statement of values and ethos as seen to have an impact upon the operation of the institution;
• matters pertaining to the ownership of property;
• provisions in respect of the taking of financial loans by the HEI.

1.4
An additional feature, already mentioned, is that, historically, most institutions have received grants or loans from church funds, often in the context of the founding of the institution or enabling a particular (faith-related) initiative to occur. The continuance of these funds has invariably been made subject to certain conditions or criteria maintaining the church foundation. (See Mutual Expectations, annex I, schedule.)

1.5
Instrument and Articles vary in their detail across the church HEIs and the listing in 1.3 above has been prepared by reference to all 14 sets of governance as collected over the period February to October 2006. No single set of Instrument and Articles (Memorandum and Articles) contains every one of them. Moreover, and to repeat, these are invariably foundation matters drawn historically from the trust objects, some of which may stretch back over a century or more. Indeed, over that time governance documentation would have undergone periodic review, including on occasions when institutions have been considering merger, but these provisions have remained. Mergers have occurred, bringing together institutions of different denominational positions or, indeed, bringing church institutions alongside secular institutions. At the time of the survey a further merger of a church and a secular institution was taking place in Cumbria.

1.6
From a governor’s point of view, the matter of recognizing and maintaining founding objects is a particular consideration within the context of the workings of a church HEI. It may well bring added complexity, but it works, and brings its own richness. Its mirror can be found in higher education systems in other parts of the world.

1.7
All of this having been said, it is important that the church HEIs meet the requirement and the spirit of good governance as set out in the various codes and remain enabled to operate successfully and competitively in the national and international higher education arena. Governing bodies need to be well led, to hold a unity in mission and purpose and to be confident in their own unfettered decision-taking. The skills of, and interactions between, the chair of governors and the chief executive are crucial to ensuring that this is achieved.

1.8
These institutions clearly meet the challenges of operating a modern governance structure while maintaining the faith dimension. The data in appendix 2, Governance documentation, demonstrates that a powerful, common, faith distinctive exists within the 14 institutions, often expressed beyond the founding trust objects.

1.9
In some church HEIs there is a body, separate from the board of governors, charged with upholding trust and/or foundation matters – sometimes called the foundation committee. The imperatives of good governance require that such a committee should be advisory to the governing body: it should not assume a role in governance. In some instances, foundation committees carry responsibility for the nomination of a group of members of the governing body. This is quite appropriate and in parallel with the governor nomination processes conducted via central church bodies, religious orders, diocesan and other groupings across the 14 institutions. The key point remains, however, that the board of governors of the HEI is the body which has the ultimate responsibility for governance. It is this group which must meet the trustees’ duty to uphold charitable objects, which serves as ‘the Board’ where the incorporated model exists, which holds legal responsibility and is protected in its lawful actions by indemnity insurance.
1.10 Some comment has been made during the fieldwork stages of this review concerning the need to maintain governing bodies of high calibre. This is explored in section B § 4.0 Advice to the chair of the governing body and section B § 5.0 Recruitment, induction and training of governors, where reference is made as to how the churches may assist. At this juncture it is appropriate to note that, in common with many other institutions across the sector, the majority of church HEIs (including for example Bishop Grosseteste University College, the University of Chichester, University of Gloucestershire, Newman College of Higher Education, St Martin’s College, St Mary’s University College Twickenham, Trinity & All Saints College and York St John University) have successfully used a public advertisement procedure for the recruitment of new governors, and some have mentioned a ‘communicant member’ or similar church distinctive when doing so. The legal advice received indicates there is no bar to including a faith distinctive in such advertisements (see appendix 3, Genuine occupational requirement and religion and belief or race discrimination).

While some church HEIs have not found it necessary to use outside advertisement in preparing lists of skilled and experienced people for governing body nomination committees to consider, it is recognised that this is an area requiring on-going attention and monitoring.

1.11 Also of relevance here is the work undertaken by the universities of Chester and Winchester, mirrored in the report by the Church of England Board of Education, Mutual Expectations, and in the deliberations within the foundation committee of York St John University, that the faith distinctive might be more broadly stated than on a denominational basis (that is, ‘communicant member’). The definitions ‘practising’ or ‘membership of a Church in association with Churches Together in England and Ireland’ are being employed to widen the pool of eligible candidates and secure an ecumenical broadening.

It is acknowledged that membership is interpreted differently in different denominations. Governing bodies of all church HEIs should be encouraged to consider this point themselves, as the broader base carries the possibility of enabling and maintaining governor appointments of the highest quality. In addition, many of the church HEIs make use of non-governor members in their committee arrangements. This provides an opportunity to broaden the skills base of committees of the governing body, identify potential future governors and to compile lists of ‘governors in waiting’. Legal advice in this regard is provided in appendix 4, Non-governors on committees.

1.12 Governance: legal advice summarized

- See appendix 1, Education Acts: specific issues for church-based institutions.
- Many institutions have proceeded to incorporate their governing bodies and so are also subject to the Companies Act 1985, as amended.
- As a charity, a church HEI is subject to Charity Act provisions: the charitable objects will be set out in charitable trust deeds and/or reflected in the Memorandum and Articles of Association. Mission statements should be fully consonant with these stated objects. There would be a concern over breach of trust if objects were not vigorously maintained by governing bodies.
- Trust deed documents (including where incorporated within Memorandum and Articles of Association) may also include provisions in respect of religious observance, property ownership, governor appointments and discontinuance of the institution. These must be honoured.

1.13 Governance: particular challenges

- Nominations (sometimes with proxy) for the chair or vice-chair of the governing body by a church body.
- Processes covering the nominations of governors should be capable of finding candidates of quality.
- Where a foundation committee (or similar body) exists, it should be invited to review its own role and operation periodically and within the context of the governing body’s own responsibilities. (See also appendix 1, Education Acts: specific issues for church-based institutions.)
2.1 General background

2.1.1 In essence, church HEIs are no different from Higher Education Corporations in the way they should treat employment issues. The employer is subject to all statutory provisions and for meeting any requirement set forth within Instrument and Articles of Government (see also the CUC guide, part III, section A § 8 on human resource management). There is a substantial body of law and practice, including that developed through the outcomes of tribunals and appeal tribunals, for governors to observe.

2.1.2 The original Model Instruments and Articles of Government covering employment issues, and more particularly appeal matters, are now somewhat dated and not in tune with modern human resource practice. In particular, the model introduces a particular difficulty in respect of the appeal rights of those designated ‘senior staff’, when viewed against the procedures expected under current legislation. Many institutions are now seeking to address this.

2.1.3 The Framework Agreement for Pay Modernisation, agreed under the auspices of the Joint Negotiating Committee for Higher Education Staffs in 2003, has led to more differentiation in pay and grading structures between institutions. A national pay spine now forms the basis for local pay and grading decisions for all higher education staff. The agreement also encourages more flexibility in pay through the use of ‘contribution points’ and ‘market supplements’. The outcome of these changes is likely to be greater pay differential both between and within institutions. It will remain the case, however, that church HEIs will need to work hard to maintain the value and currency of their own pay and conditions packages viewed against sector comparators. This will be important for the maintenance of reputation and quality, sometimes in areas where suitably qualified and experienced staff are in short supply.

2.2 The genuine occupational requirement (GOR)

2.2.1 Several pieces of domestic and European legislation provide the foundation for diversity and equality of opportunity in employment within HEIs. Many aspects refer directly to recruitment and career development opportunities.

2.2.2 The overwhelming majority of church HEIs have Instrument and Articles which set out the need for certain key staff to hold a particular religious belief in order to maintain the founding trust principles. Typically, such appointments include the chief executive [vice-chancellor, principal] and the chaplain(s). In some instances they also refer to a deputy to the chief executive or a senior academic post (dean or head of department in theology). Such a requirement has, in some cases, been reinforced by grant or loan condition from a church funding source and/or a ‘golden vote’.

2.2.3 The church HEIs are not unique in presenting this set of circumstances: like situations will arise in faith schools, for example, and in other national faith-based charitable bodies and organizations. Indeed, across this wider canvas, the faith distinctive need not necessarily be Christian. In offering advice to governing bodies, it has to be made clear that the law in this area has yet to be fully tested in the courts, although some particular parts of legislation – for example The Employment Equality (Religion or Belief) Regulations 2003 – provide a helpful reference.

2.2.4 Against this background, the legal advice received suggests that an HEI with a religious ethos in its founding document (or documents approved by the governing body) is likely to be able to make the case for a GOR in respect of the chief executive post (and chaplaincy). What is certain is that the GOR condition at appointment is further strengthened when the faith position of the HEI is unambiguously held and followed. Some of the church HEIs (for example, Canterbury Christ Church University, University of Chester, St Martin’s College and the three Roman Catholic institutions) have further references to the Christian mission or ethos of the institution in other sections.
of their governance documents. (Because of the significance of this issue, a fuller briefing note has been prepared by Mills & Reeve: see appendix 3, Genuine occupational requirement and religion and belief or race discrimination).

2.2.5
Governing bodies committed to maintaining the GOR position of their chief executive are advised that the faith distinctive element of their trusts or Instrument and Articles (Memorandum and Articles) should not be made weaker in any future redrafting. Indeed, these faith ‘objects’ should, where practicable, be reflected in other key institutional documents such as the mission statement, equal opportunities and equality statement, employee documents, student prospectus and elsewhere, as this serves to reinforce the GOR claim. It goes without saying that if such clear statements are included in formal policy documents it is essential that the institution, led by its governing body, should seek to operate according to these values in all its activities.

2.2.6
It is important for an institution to be clear and open about such matters, particularly if at any time the codes or rules for the employment of staff, framed by a governing body in accordance with the provision of their Instrument and Articles of Government, are referred to in the context of an internal grievance or disciplinary process.

2.2.7
There are further recommendations on these matters in section C, Maintaining the faith distinctive.

2.3 Particular challenges
• There is a diminishing pool of good-quality candidates for the most senior posts who are either Roman Catholics or communicant members.
• In a small number of cases Instrument and Articles of Government require that the vice-chancellor or principal should cease to serve as a governor if he or she ceases to be a ‘communicant member’.
• While not a matter of employment law, there is a parallel in relation to the appointment (ex officio) of certain governors holding a faith distinctive under nomination procedures from church bodies.
• Whereas a GOR position can be maintained for the chief executive of the HEI and the chaplain, the GOR position of other post-holders can be less clear (see also appendix 3).
3.0 Equality and Diversity

3.1
A detailed note has been prepared by Mills & Reeve in appendix 5, *Equality and diversity*.

3.2
Institutions may also refer to *Employing people in higher education*, guidance provided by the Equality Challenge Unit, in which the Multi Faith Centre at St Martin’s College, Lancaster is quoted as an example of good practice.

4.0 Advice to the chair of the governing body

4.1
The CUC guide contains a short section of important notes on the role of the chair (see part II § 2.10 – 2.13), which provide a helpful reference. The history and culture of the church HEIs, exemplified in their governance documents, make it necessary to bring a small number of additional points to the attention of the chairs of the church universities and colleges. Whereas in former days the church was possibly seen as the single primary stakeholder in these institutions, this position has been redefined in the context of a modern higher education system where many other stakeholders, local, national and international, may be identified. This changed circumstance needs to be recognised. Indeed, the Companies Act 2006 comments upon the responsibility directors will bear to act for the benefit of all stakeholders.

4.2 The role of the chair of the governing body in church HEIs

4.2.1
As the CUC guide makes clear, it is not for the governing body, or indeed its chair, to become embroiled in the day-to-day management of the institution. Specific and defined roles are identified within Instrument and Articles for governors, the chief executive and the academic board. One of the most important tasks falling to the governing body, however, is the ‘determination of the educational character and mission of the institution and the oversight of its activities’. It is with this definition in mind that it may be helpful to explore some of the challenges presenting themselves to the chairs of church HEI governing bodies which may not necessarily arise elsewhere.

4.2.2
Undoubtedly, and this is the case across the sector, the role of the chair is now larger and more challenging than when many of the originating trusts were established. There is an overlay in complexity of governance within the church HEIs arising from clauses and statements of faith and practice in founding trust and objects. It remains a legal requirement to maintain these trust objects. In the higher education sector, the time demands made upon a chair in the governance, ceremonial and discretionary areas of his or her responsibility are not insubstantial. Should a
governing body consider that its chair requires some personal support to assist in the full discharge of his or her responsibilities, a properly documented scheme of delegation should be agreed in advance, granting specific authority for the vice-chair to deputise.

4.2.3 Where members of the governing body of a church HEI are appointed ex-officio or by nomination through the churches there is a particular need for the chair to ensure that all governors, notwithstanding the basis of their appointment, together honour the mission, values and ethos of the institution. None can carry a proxy for another party: there should be no conflicts of interest. The chair should seek to ensure that all members of the board work to secure the interests of the institution as a whole.

4.2.4 In similar vein, this report indicates (section B § 2.2) that the clear and unambiguous upholding of the statements of objects, mission and ethos throughout the policies and workings of the church HEI enables and reinforces the position of the Christian ‘distinctive’ and any expected GOR. The chair should ensure that this is not overlooked. Moreover, governing bodies are charged with conducting periodic reviews of their own effectiveness and, in the case of church HEIs, this could very well include consideration of how the governing body takes responsibility for church-mission-related matters.

4.2.5 In some church HEIs the chair will also need to ensure that proper arrangements, both formal and informal, are in place so that the expression of a foundation committee (or similar) is fully heard by the governing body.

4.2.6 The chair, together with the chief executive, will also play a key role in ensuring a good relationship and exchange of views with the church at local and national levels. Of particular importance in this regard is the work of the governors’ nominations committee in considering governor appointments for persons nominated by the churches, working always to maintain that balance of skills and experience essential to the effective working of the board (see also section C, Maintaining the faith distinctive).

4.2.7 Comments elsewhere in this report emphasize the response made by church HEIs in respect of diversity and inclusivity. Holding an essential faith position means that this should be so. It is to be expected, however, that additional emphasis may well be given to evidence of this element at work by any external (third party) reviewer. The board, and its chair, should be aware of this.

4.2.8 In fostering links with the church, the chair plays a critical role in ensuring that high priority is afforded by all parties to scoping, articulating and participating in the delivery of the distinct mission. Mutuality of purpose and endeavour on the part of the church and HEI partners make this essential. In his chapter on ‘Searching for institutional identity and mission’ in Faith and secularisation Professor James Arthur makes reference to documentation from the Australian Catholic University which includes an extract from Pope John Paul II’s apostolic constitution Ex Corde Ecclesiae: ‘the relationship with the local Church “will be achieved more effectively if close personal and pastoral relationships exist between university and church authorities characterised by mutual trust, close and consistent co-operation and continuing dialogue”.

4.2.9 Another matter raised during the fieldwork stage of this review concerned the engagement of the governing body in the curriculum activities of the HEI. Sound and full advice about the respective roles of the governing body, chief executive and academic board in curriculum areas and in relation to academic freedom and freedom of speech is given in the CUC guide.

There could exist a pre-disposition on the part of governors nominated by the churches to focus on areas of specific personal concern or interest – for example, aspects of scientific or health research, teacher education or theological education – and for them to challenge these areas from a denominational or faith position. It is not always helpful or appropriate for governors to intervene in the particular. It is right for them to focus on strategy and corporate direction, however, including giving definition to the ‘educational character and mission’ of the institution. They should be
prepared to challenge where they identify any shortfall and to ask questions about new and developmental proposals.

It is also important for governors to witness the workings of the institution at first hand, probably without the senior team present; a programme of departmental or faculty visits often serves to increase understanding. It remains good practice for the governing body regularly to receive the minutes of the academic board so that the efficacy of the processes and protocols for course development and scrutiny can be reviewed. In some institutions governor members hold a place (observer status) on the academic board – a mirror of the academic board-nominated governor – so as to increase the exchange of understanding between the two bodies. Some establish links between an individual governor and a named department, while others provide for a day in the annual programme when governing body and academic board can meet together. At least one institution vests clerkship of the governing body and academic board in the same officer.

4.2.10
Finally, in this section, a comment concerning the termination of a governorship.

Beyond any standard arrangements for the re-appointment or rotation of serving members, the governance documents of each HEI contain provisions in respect of the removal of governors from office for reasons such as age, bankruptcy or poor attendance at meetings. It is important that these provisions are made known to (church) nominating bodies in advance. This is a matter of good governance and is referred to in the CUC guide (part II § 2.23). Advice in annex A2 to the CUC guide in respect of conflicts of interest is also relevant.

4.3 Particular challenges

- The legal obligations arising from trust deeds, charity law and incorporation (company law) should be fully observed.
- It is essential to ensure that the governing body operates independently and authoritatively, carrying sole responsibility for the governance of the HEI.
- Governing bodies should develop means whereby opportunities for shared mission and ministry are developed and articulated between the HEI and the church.
- There should be a recognition that if a faith distinctive element – for example, GOR or faith expression in the mission statement – is ceded by a governing body, it is unlikely to be reinstated at a later date.
5.0 Recruitment, induction and training of governors

5.1 The induction and training needs of the governors of HEIs have been given increased attention over the past five to ten years, reflecting the growing complexity of the role and an enhanced emphasis on good governance across both business and public sectors. As a consequence, many new initiatives have occurred in HEIs at local, group or national levels (see also CUC guide, part II, p 23).

5.2 Skills and experience

5.2.1 In awarding Leadership, Governance and Management Fund (LGMF) support to this project on church HEI governance, HEFCE indicated that the developing role of the Leadership Foundation for Higher Education should also be considered. Discussions among the 14 institutions have confirmed that governors and senior staff are aware of and engaged with governance training programmes offered by the Leadership Foundation, alongside those previously established by CUC and GuildHE (previously the Standing Conference of Principals). The church HEIs pay tribute to the quality and commitment of their governors and recognize that increased demands have been and continue to be placed on these key people. As is the case in HEIs across the sector, the nomination committees of the church university and college governing bodies are working hard to ensure an appropriate mix of skills and diversity of governor members. Excellent appointments are being made, bringing ‘new blood’ from the churches, education, business and professional and other communities. Efforts are continuing to ensure that governing bodies reflect the diversity of the wider community. In addition, and in the context of the review, there has been some reflection upon the recruitment, commitment and participation of governors proposed through the nominations processes of the churches. There is increased awareness of the need for high-calibre governors, who are able actively to participate, and actions are being taken to ensure that appropriate appointments are being made.

• There is evidence of an increased and proactive engagement with (church) nominating bodies on the part of chairs, chief executives and clerks.
• Recommendations from the churches are being discussed within governing body nomination committees in order that a broad mix of background and skills may be secured across the governing body overall. This should continue.
• Added attention has been given to succession planning for governors.
• Where appropriate, public advertisements for new governors have been placed in national newspapers and the churches’ own national publications. These have proved successful – often widening the geographical base from which governors are drawn.
• Opportunities are being taken to involve prospective governors in the events and activities of church HEIs so as to identify those who may in time accept governorship. These opportunities take many forms, ranging from the more formal co-opted participation on governing body committees, say as professional input for audit or estates matters, to an engagement with stakeholder consultative groups, or in ceremonial or social contexts.

5.2.2 These activities will not be seen as different in essence from those taking place across the rest of the higher education sector, and that is right. Be that as it may, the fact certain denominational routes exist through which some governors are identified to serve on church HEI governing bodies cannot be allowed to have an adverse impact on the quality of governor members. The challenge this presents is a matter both for the HEI nominations committee and the church. As will be developed in section C, Maintaining the faith distinctive, the call to the churches, whether at diocesan or national level, is to enable the very best candidates, ordained and lay, to consider making a contribution in the higher education sector – a sector crucial to carrying through the churches’ mission and engagement in education.

5.2.3 Many governors come to their role having had experience in trusteeship, company board membership or elsewhere; to this is added an induction based on topics pertinent to the higher education sector. Governors drawn from such backgrounds bring to the HEI a challenge and rigour founded on successful governance schemes and practices experienced elsewhere. The higher education sector is changing rapidly and governing bodies in the church HEIs fully
accept their obligation to provide induction and on-going development training for governor members.

5.2.4
Much use is made of the away day or strategy meeting (sometimes in residential format), offered on a regular annual timetabled basis and often including some external input. Typically, contributions come from:
- auditors;
- HEFCE/government/officers of national organizations;
- senior managers from other HEIs;
- specialists and consultants from relevant sectors.

5.2.5
It remains a challenge for each institution to strike a balance between equipping its governors to serve while recognizing the pressure placed on already busy people by other demands.

5.2.6
In addition, it is recognized that some newly appointed governors, and in particular some identified via church nominating bodies, may have a limited knowledge or experience of institutional governance or business operations. It follows that this should be the subject of particular focus in on-going review and development. In similar vein, it is important that all of those appointed to serve as governors of a church HEI appreciate the responsibility they carry for maintaining the trust objects and mission distinctive.

There is a clear role here for the clerk in establishing the needs to be addressed by an induction programme at the outset of a governorship.

5.2.7
The review found a variety of approaches to induction training for governors. They include:
- elements of the programme being conducted alongside the general induction arrangements for the HEI’s own staff;
- the provision of both general or key topic training with national groups for example, HEFCE, CUC, GuildHE, the Leadership Foundation for Higher Education or with other HEIs on a regional basis.
- some key specific training requirements have been identified by institutions and courses made available for example in:
  - financial management;
  - audit;
  - risk assessment;
  - human resources (including for appeals processes);
  - corporate/strategic planning;
  - pensions.

5.2.8
Many institutions prefer to operate independent induction programmes, while others enter local or regional arrangements with neighbouring HEIs (church institutions or not) and beyond this take advantage of the training opportunities offered nationally. Energetic attempts are being made to demystify the higher education sector for governors, including the challenges posed by the liberal use of acronyms and ‘sector jargon’.

5.2.9
A reference to a matrix of skills for governors proforma is given in appendix 6, to support nominations committees in making governor appointments.

5.3 Particular Challenges
- In the area of governor recruitment, the church HEIs recognize the need to ensure that all governor members, whether appointed via the Church or otherwise, meet a profile that will ensure a broad mix of skills and experience across the whole group, a preparedness to commit to the distinctive faith and mission clauses, the maintenance of the trust objects and full and active involvement in the work. From the outset, institutions should make the level of time commitment clear.
- A discussion or interview with prospective governors beforehand is recommended. The chair, chief executive and clerk should take part, so that all elements are explored.
- Attention continues to be given to programmes of induction and training for governors. Delivery of programmes has been arranged at institutional, local co-operative, regional and national levels; a number of offerings exist. Moreover, the institutions continue to provide opportunities for away days or similar gatherings as well as programmes of visits to departments, faculties and so on. The challenge is not to compromise the process by overloading already busy people. Before any further initiative is taken by the CCCU – say for example in providing church HEI-based training programmes for governors on specific
topic areas – the opportunity should be taken to review the number and efficacy of programmes already available, including those offered by the Leadership Foundation.

• Quite separately, however, and in recognition of the expectation that the churches seek to nominate governor members who are suitable in every way to the stated requirement, there may well be a case for the churches themselves to initiate internal processes whereby experienced people active in parishes and dioceses are presented with the challenge of serving as governors within higher education. There is a clear parallel here with a similar requirement for church schools.
Section C
Maintaining the faith distinctive
1.0 The faith dimension

1.1 Mention has been made of the origins of the church universities and colleges as being established under foundation or trust deed provisions with objects which include clauses and underlying precepts in respect of faith and values. Emphasis has been given to the fact that the governing body, whether a trustee body or a body corporate, has a legal duty to maintain these objects. In a similar way, comment has been made concerning the position of the churches in ensuring that founding trusts are observed without inappropriate intervention into areas rightly the preserve of institutional governing bodies.

1.2 There is no question that a faith distinctive exists for these institutions. The challenge lies in holding and maintaining it for the future.

1.3 There is a sense that some institutions or governing bodies may find it difficult to respond to a question posed by an external third party such as: ‘How do you articulate this distinctive?’ ‘By their deeds you shall know them’ is a first response; most certainly the faith distinctive should permeate the full range of the institution’s dealings. Moreover, all the church HEIs would (and do) embrace Nolan’s seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. There must also, however, be unequivocal signs of a faith clearly held within an institution based on Christian values. Contributors to this report have identified the following as distinctives:

- an energetic chaplaincy, one which pervades the whole institution beyond the duty to maintain public acts of worship;
- regular opportunities for public worship and celebration of faith, open to all;
- acceptance of other faiths and provision for the practice of those faiths;
- prayers said at occasions such as degree congregations and meetings of the governing body;
- the appointment of a Christian as chief executive and the maintenance of a strong representation of Christian people on the governing body;
- a commitment to being a values-based community and the development of exemplary policies and procedures, particularly those for the employment of staff and the welfare and support of students;
- maintaining a watch on academic developments to ensure that the founding principles are upheld in programme development, quality, scrutiny and examination processes – all in support of the mission and aims of the institution;
- making it clear in the mission statement, equality policy, employment conditions, student prospectus and elsewhere that there are foundation principles which the HEI seeks to follow and maintain and is prepared to answer for;
- celebrating the fact that church HEIs are places where good staff relations are encouraged and morale upheld and where students flourish in a caring environment, so that the recruitment and retention of staff and students remains good;
- willingly accepting the costs of maintaining appropriate levels of chaplaincy, Christian worship and theological education;
- recognising the responsibility for fostering special relationships with faith schools, theological education (within the institution and without) and effective education scholarship and research contributions to faith bodies, all as appropriate to the standing of an HEI seeking to serve within its own community and further afield;
- service learning and encouragement for voluntary projects among students and staff;
- promotion of social justice, including pursuit of fair trade status.

1.4 As indicated in section A § 1.2, education law places a particular duty on the Higher Education Funding Council for England (HEFCE) and the Training and Development Agency for Schools (TDA) in respect of their dealings with HEIs and schools of denominational character. It is therefore important for the educational institutions to do all that they can to facilitate the effective discharge of this duty by those agencies.
1.5 Particular Challenges

- HEIs should seek to strengthen, enable and empower chaplaincy work across the whole institution, seeing the chaplain’s contribution as reaching far beyond maintaining the chapel and services of public worship. There are many examples within the church HEIs where this works well and where confidence in the chaplaincy runs deep across the whole institution, among those of ‘all faiths and none’. To facilitate this:
  - Help is required from the churches in securing candidates of excellent quality for chaplaincy appointments.
  - The agendas of governing body meetings should include a report on chaplaincy provision, on an at least annual basis.
  - All members of a governing body should play their part in fostering and upholding the mission of the institution ‘operating as a single entity’.
  - Committees of the churches responsible for identifying governor nominations should seek to ensure that those proposed can bring excellent, up-to-date and appropriate skills to the role and are prepared to meet the demands on their time which effective participation demands.
  - The churches should establish effective means whereby their own hopes and aspirations in higher education are made clear to the sector and, in reverse, that information concerning the plans and challenges facing institutions are clearly and accurately relayed to the churches. A strong sense of participation and partnership has to be maintained and mutualities fostered.
  - The governing bodies of church HEIs, and the Council of Church Colleges and Universities on their behalf, should be concerned to maintain a full and open dialogue with both HEFCE and the TDA, to assist them in discharging their statutory duty in respect of institutions having a denominational character.
Section D
Summary of findings and recommendations
As a consequence of work on this report, the following points are brought to the attention of governing bodies, the churches and HEFCE.

Governing bodies of church HEIs should:
• note the CUC guide (part I § 6 and part II § 2.24) where it is made clear that governors cannot act as the representatives of an external constituency;
• be assured that it is (legally) possible for governors to be nominated via a faith body or denominational base;
• ensure that all governors together hold the trust objects and accept joint responsibility;
• ensure that trust objects and mission are upheld and fostered;
• be clear in their duty as custodians of the Christian ethos, and their support of chaplaincy;
• recognize the importance of the role of the chief executive in upholding mission;
• where it wishes to maintain the GOR position, acknowledge and uphold the importance of maintaining GOR for its chief executive;
• where it wishes to maintain the GOR position, be vigilant in striving to uphold and demonstrate the ‘distinctive’;
• seek advice from their nominations committee and apply their agreed matrix of skills for all governor appointments;
• ensure that institutional policies and practices uphold the principle of ‘all faiths and none’;
• ensure that mechanisms are in place to provide reassurance to governor members concerning the nature and quality of academic provision (setting the ‘general educational character’ and so on);
• keep under continuous review with the church (denominational body) the mission and vision they share and wish to articulate, ensuring, too, that good channels of communication are in place to achieve this;
• ensure that effectiveness reviews of the governing body incorporate faith-distinctive issues.

They may consider widening the recruitment base for chief executive and governors from a single denominational position to ‘member of Churches Together in England and Ireland’ (or similar).
With respect to their engagement in higher education, churches should:

- acknowledge the number and variety of stakeholders attaching to any HEI;
- keep under continuous review with church HEIs the mission and vision they share and wish to articulate. They should also ensure that good channels of communication are in place to achieve this and that variations do not occur between different sections of the church, dioceses or other constituencies.
- reconsider any limitations placed on specific appointments within a governing body – for example, chair or vice-chair – which challenge the CUC guide and good governance;
- recognize, when submitting prospective governor nominations, the increased challenges of HE governorship including:
  - the time commitment and
  - the range of skills required.
- undertake periodic reviews of the effectiveness of their own role in higher education governance arrangements;
- give consideration as to how the church partners support a modern HEI;
- acknowledge the position of church universities and colleges in relation to the whole commitment of the church (in education) including:
  - the mission in schools;
  - the career development of teachers in church schools;
  - an increased engagement with church HEIs in the churches’ development of education programmes (for the church), proactive partnerships, supporting academic research and so on;
  - the supply of excellent chaplains and links with parish work that is focused on the student community;
  - the nomination of excellent governors.
- promote chaplaincy, its funding and sustenance;
- recognize that the holding of property is an important factor in enabling the church HEI to operate as a flourishing and financially sound institution.

HEFCE is committed to having a vibrant and diverse provision in higher education. To achieve this, HEFCE and CCCU should revise and refresh the Joint Advisory Committee for Church Universities and Colleges (JACCUC), and realign with a strengthened CCCU. The continuing engagement of the TDA with JACCUC is therefore seen to be important.
Appendices
The distribution of funding by the Higher Education Funding Council for England (HEFCE) is regulated by legislation. Section 65 of the Further and Higher Education Act 1992 enables HEFCE to make funding available to ‘higher education institutions’ which are classified in the legislation as ‘universities’, ‘higher education corporations’ and ‘designated institutions’. Member institutions of the Council of Church Colleges and Universities (CCCU) may fall into one of these classifications for the purposes of being an authorized recipient of HEFCE funding. If it is not a university or a higher education corporation, the Secretary of State may ‘designate’ an institution as eligible to receive HEFCE funding: section 129 (1) Education Reform Act 1988 (ERA 1988). To be so designated, however, it must appear to the Secretary of State that the institution’s full-time equivalent enrolment number for higher education courses must exceed 55 per cent of its total full-time equivalent enrolment number, or the institution must be conducted by a successor company to a higher education corporation: section 129 (2) ERA 1988.

Sections 129 A and 129 B of the ERA 1988 stipulate certain conditions in respect of the constitutions (instruments and articles of government) of designated institutions, whether established as companies or otherwise, and provide for the Privy Council to approve amendments to their constitutions.

While HEFCE is afforded discretion in making funding available, it has a statutory duty to have regard to the desirability of maintaining what appears to it to be an appropriate balance in financial support for institutions of a denominational character or with otherwise distinctive characteristics: section 66 (3) Further and Higher Education Act 1992.

For the purposes of section 66 (3) above, an institution is defined by section 66 (4) as an institution of denominational character if it appears to HEFCE that either:
(a) at least one quarter of the members of the Governing Body of the institution are persons appointed to represent the interests of a religion or a religious denomination,
(b) any of the property held for the purposes of the institution is held upon trusts which provide that, in the event of the discontinuance of the institution, the property concerned shall be held for, or sold and the proceeds of sale applied for, the benefit of a religion or religious denomination, or
(c) any of the property held for the purposes of the institution is held on trust for or in connection with –
(i) the provision of education
(ii) the conduct of an educational institution, in accordance with the tenets of a religion or religious denomination.

These sections impose on HEFCE a statutory duty to consult the church-based institutions in carrying out its main funding duties.

In addition to the statutory regulation under the Education Acts, the church-based institutions have charitable status and are regulated under the Charities Act 1993 (soon to be amended by the Charities Bill, once enacted).

Those institutions established as companies are also regulated by the Companies Act 1985 (soon to be amended by the Company Law Reform Bill, once enacted).
## Appendix 2
### Governance documentation: a summary by institution
(as at November 2006)

<table>
<thead>
<tr>
<th>Charity reg no.</th>
<th>Company or trust</th>
<th>Governing documents</th>
<th>Christian/denominational majority on governing body (GB)</th>
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<tr>
<td>Bishop Grosseteste University College</td>
<td>527276</td>
<td>T</td>
<td>Scheme 1967/71 plus I &amp; A 2005</td>
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<tr>
<td>Canterbury Christ Church University</td>
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<td>C</td>
<td>Mem &amp; Arts incl. I&amp;A 2003</td>
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<td>Mem &amp; Arts incl. I&amp;A 2005</td>
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<td>Mem &amp; Arts 1996 inc I&amp;A</td>
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<td>Newman College of Higher Education</td>
<td>1110346</td>
<td>C</td>
<td>Mem &amp; Arts inc I&amp;A 2005</td>
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<tr>
<td>Roehampton University</td>
<td>276590/1050470/312936/312937 (Colleges)</td>
<td>C exempt Charity</td>
<td>Mem &amp; Arts 2004 (inc I&amp;A)</td>
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<tr>
<td>College of St Mark &amp; St John</td>
<td>312929</td>
<td>T plus C</td>
<td>Scheme 1975/1996 plus Mem &amp; Arts of Foundation</td>
</tr>
<tr>
<td>St Martin's College*</td>
<td>1117625</td>
<td>C</td>
<td>Mem &amp; Arts of Assoc incl I&amp;A 2007</td>
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<tr>
<td>St Mary's University College, Twickenham*</td>
<td>312935</td>
<td>T</td>
<td>1851 Trust 1965 Scheme I&amp;A 2000</td>
</tr>
<tr>
<td>Trinity &amp; All Saints College</td>
<td>529195</td>
<td>T</td>
<td>Deed 1965 I&amp;A 2004</td>
</tr>
<tr>
<td>University of Winchester</td>
<td>307254</td>
<td>T</td>
<td>I &amp; A</td>
</tr>
<tr>
<td>York St John University</td>
<td>529589/1098356</td>
<td>T</td>
<td>Scheme 2003 plus I&amp;A 2005</td>
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* Information for St Martin's College and St Mary's University College, Twickenham updated in May 2007.
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<table>
<thead>
<tr>
<th>Chief executive as GOR</th>
<th>Faith distinctive in Objects</th>
<th>Faith distinctive Outside Objects</th>
<th>Foundation trustees/ custodian</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>No</td>
<td>Yes Art 3.1, Inst 3.2</td>
<td>Lincoln Diocesan Trust (hold property)</td>
<td>Trust deed revision overdue</td>
</tr>
<tr>
<td>Yes (and deputy)</td>
<td>No</td>
<td>Yes Arts 58, 67</td>
<td></td>
<td>Recent incorporation</td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
<td>Yes Clause 7, Schedule 1</td>
<td>Official Custodian UOG hold property</td>
<td>Strong statement of Christian distinctive in objects clause</td>
</tr>
<tr>
<td>Yes (and deputy)</td>
<td>No</td>
<td>Yes Art 7.2, MS</td>
<td>Chester Diocesan Board of Finance (hold property) and Foundation Trustees</td>
<td>Instrument of govt. currently under review</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
<td>Yes Art 3.2, 4.2</td>
<td>Bishop Otter Trust (holds some of the land)</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes Art 19.2, MS</td>
<td>Christ's &amp; Notre Dame College Warrington TC</td>
<td>Federal Institution: role of constituent colleges</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes MS</td>
<td>Digby Stuart, Whitelands, Southlands, Froebel Educational Institute</td>
<td>Recent incorporation</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
<td>Yes Strategic Plan</td>
<td>St Mark &amp; St John Foundation (has no impact at all)</td>
<td>Collegiate university</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes Articles Mission Statement</td>
<td></td>
<td>Looking to revise Mem &amp; Arts after award of Taught Degree Awarding Powers</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes MS</td>
<td>1851 Trustees</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes Art 3.2</td>
<td>Charity Trustees</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td>Yes Strategic Plan</td>
<td>Foundation Committee of G.B</td>
<td>In process of incorporation</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td>Yes Mission Statement</td>
<td>York St John Endowment (Company: 2002)</td>
<td>Foundation Committee 2002 introduced and active</td>
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</table>
This appendix seeks to give a summary of a complex area of law without going into too much detail. The issues have not been tested out in the courts or employment tribunals and, given the competing issues in play, may be tested out in due course. Specific and detailed advice should be taken in individual situations.

On the face of it, there may be an argument that a requirement for any governor or employee to hold a particular religion or belief would breach the Employment Equality (Religion or Belief) Regulations 2003 and/or the Race Relations Act 1976 (as amended). An institution may well be able, however, to rely on a specific ‘Genuine occupational requirement’ defence (GOR).

A GOR defence applies in two situations:

• HEI has no religious or belief ethos
  In this situation the HEI would need to show that having regard to the nature of the employment (or office holding) or the context in which it is carried out being of a particular religion or belief is a genuine and determining occupational requirement and it is proportionate to apply that requirement in the particular case.

• HEI has an ethos based on religion or belief
  In this situation, the HEI would need to show that having regard to that ethos and to the nature of the employment (or the office holding) or the context in which it is carried out whether of a particular religion or belief is a genuine occupational requirement of the job (or office) and that it is proportionate to apply that requirement in the particular case.

As can be seen, the tests are similar, although if an institution has an ethos based on religion or belief then it is slightly easier to show that a GOR exists. There is little case law, however, and a GOR defence can be difficult to establish, the burden falling on the HEI.

**Appointment of governors**

The membership of the governing body will be set out in the founding documents of each institution, and is likely to vary from institution to institution. The membership may include governors who:

• hold specific positions within a Christian denomination;
• are appointed by a Christian denomination, or
• must be a practising or communicant member of a Christian denomination.

As stated there may be an argument that a requirement for any governor to be appointed on these grounds is likely to breach the relevant legislation. In most situations, however, governors are not employees of the institution, but office-holders. The legislation only applies to office-holders if they are appointed to discharge functions personally under the direction of another (which is unlikely) and they receive remuneration (which means more than reimbursement of expenses and compensation for loss of other income). Whether or not a governor may be paid will depend on the constitution of the institution and the application of charity law.

If a governor is protected as an office-holder from discrimination on the grounds of religion or belief or race then a GOR may apply (see below).

**Appointment of principal /vice-chancellor/ chief executive**

The founding documents may set out a requirement for the principal /vice-chancellor/chief executive to be of a particular religion, or such a requirement may be contained within a document approved by the governing body.

The principal /vice-chancellor/chief executive is likely to be an employee of the institution, or, if not, an office-holder to whom the legislation applies.

Again, on the face of it, the requirement of a particular religion is likely to breach the legislation.

We consider it likely that an HEI with a religious ethos in its founding documents (or documents approved by the governing body) would be able to establish a GOR defence for the principal /vice-chancellor/chief executive, but the following points should be noted:

• The legislation requires a consideration of the nature of the job in the context in which it is being carried
out, considering the functions of the job in the widest sense and each time a vacancy arises.

- There must be a ‘requirement’ for someone to have a particular religion or belief, or, as the Department for Trade and Industry (DTI) guidance puts it, it must be ‘essential’ for the job, not merely a preference or qualification.

- The requirement must be ‘genuine’, that is the employer must not create the requirement on a whim.

- The HEI will need to prove that the requirement meets the proportionality test, that is that it is an appropriate and necessary means of achieving the legitimate aim. It is not sufficient to show that this is one way to achieve the desired result. Other means of achieving the legitimate aim which may be less discriminatory should also be considered.

If there is no religion or belief ethos then the requirement must also be ‘determining’, or ‘crucial’ to the post, as the DTI defines it, not one of several important factors.

Church HEIs which move away from their religious ethos will find it harder to establish a GOR than those who maintain their religious ethos or belief. Similarly, church HEIs which decide that there is no GOR for a particular post would find it difficult to seek to establish one at a later date.

**Appointment of other staff**

The same tests apply for other members of academic and non-academic staff. It will be harder to rely on the religion and belief ethos situation for staff other than principal/vice-chancellor/chief executive, although the other test will apply. We think it likely that the GOR could be established for chaplains, teachers of theology and, depending on the role of each individual, the deputy principal/vice-chancellor/chief executive. Whether a GOR would apply for other staff would depend on the facts identified above. Again, each individual situation will need to be looked at and the institution will need to determine whether the GOR defence applies each time a vacancy arises.

The ACAS guide to religion or belief and the workplace specifically provides that a GOR cannot be used to establish or maintain a balance or quota of employees of a particular religion or belief. Each individual position must be considered on its merits.
There are two key issues to consider in respect of the issue of individuals being on committees within an institution where such individuals are not members of the governing body: best practice in corporate governance and legal principles and requirements regarding delegation of duties and powers.

In the higher education sector, the financial memorandum between an institution and the Higher Education Funding Council for England (HEFCE) will require the institution to have an audit committee and for the institution to comply with the HEFCE Audit Code of Practice (June 2004/27, as amended).

Paragraph 70 of the HEFCE Audit Code of Practice states: ‘The audit committee should consist of at least three members of the governing body, and should be able to co-opt others with particular expertise or interests who are not members of the governing body.’

It also includes a model terms of reference for the audit committee which states (annex C): ‘The committee and its chair shall be appointed by the governing body, from among its own members…’ (§ 2) ‘The committee may, if it considers it necessary or desirable, co-opt members with particular expertise.’ (§ 3)

These principles of best practice in corporate governance – which institutions funded by HEFCE need to be able to put in place in respect of its audit committee (but which also might be helpful for other committees) – need to be compatible with legal principles and requirements for any delegation of duties or powers imposed on the governing body.

As a general principle, the governing body must have the express power to delegate any of its duties or powers to another person or body, such as a committee. Otherwise, decisions which are taken by such a committee may be ultra vires and void.

The terms of such a delegation should be clear in the constitutional documents themselves (for example, Instruments and Articles) and prescribe the composition of such a committee. If a non-governor is to have a decision-making role (a voting power) in the exercise of the delegated power or duty given to the committee, then it should be clear in the constitutional documents that a non-governor may be co-opted to be a member of the committee.

A committee may include an observer or adviser who is not a member of the committee without an express provision in the constitutional documents since such a person will not be in a position to vote or otherwise exercise the delegated power or duty given to the committee. In practice, however, care needs to be taken that such an observer or adviser does not overstep the line, or that the committee simply rubber-stamps the views or advice of the observer or adviser.

Specific advice should be taken on the terms of an institution’s constitutional documents and any additional requirements under the Companies Act (if applicable) and the charities legislation.
The CUC’s Guide for members of higher education governing bodies in the UK (CUC guide) makes reference to various pieces of domestic legislation which seek to provide legal protection for individuals against unlawful discrimination and promote equality and diversity.

Reference is made in the CUC guide to the Race Relations (Amendment) Act 2000 which amended the Race Relations Act 1976. It places a positive duty on higher education institutions receiving HEFCE funding to have due regard to the need to:
• eliminate unlawful racial discrimination;
• promote equality of opportunity;
• promote good relations between persons of different racial groups.

It is beyond the scope of this report to provide a comprehensive review and update of all equality legislation. It is worth noting, however, that the Equality Act 2006 will establish a new Commission for Equality and Human Rights and supplement existing equality legislation.

The following legislation is likely to be of particular relevance to a number of issues for church based higher education institutions, including:
• the Sex Discrimination Act 1975
• the Race Relations Act 1976 (as amended)
• the Human Rights Act 1998
• the Employment Equality (Religion or Belief) Regulations 2003
• the Employment Equality (Sexual Orientation) Regulations 2003
• the Gender Recognition Act 2004
• the Civil Partnership Act 2004
• the Equality Act 2006.

Position of governors
Governors are unlikely to be employees of an HEI. As office-holders, they may however have protection under the equality legislation. Most of the equality legislation adopts the approach set out under the religion and belief legislation which is dealt with in appendix 3. It can be seen that it is unlikely that governors will be protected as either employees or office-holders. If they are protected, then there may well be a Genuine occupational requirement (GOR) for the religion and belief or race legislation.

Position of staff
The focus of the legal advice has been on the extent to which it is possible to maintain a GOR for this group of higher education institutions (see pages 10-11 of the report and appendix 3 for further details). There are equality issues additional to these provisions that need to be considered; they are dealt with below.

Unlike the position for ‘faith schools’, there does not appear to be any specific statutory provision expressly authorizing appointments, promotions and other decisions or actions being made in higher education institutions on the basis of such institutions’ faith foundations. Accordingly, church HEIs need to comply with the law that applies to non-church institutions.

In addition to the right not to be discriminated against on the grounds of race or religion and belief (which are dealt with in appendix 3), individuals have rights not to be discriminated against in employment on the grounds of sexual orientation, in respect of a gender reassignment and in respect of their civil partnerships.

These examples of individual rights may cause a tension with the religious tenets of the church colleges and universities.

In respect of sexual orientation there is a potential GOR. The GOR in respect of sexual orientation differs slightly from that in respect of religion and belief. The GOR for sexual orientation has two elements.

The first is the same as that which applies on religion or belief grounds and which is dealt with in appendix 3. It is unlikely, in the case of sexual orientation, that a church HEI would be able to rely on this element of the GOR.

There is a GOR additional to the standard requirement which applies when employment is for the purposes of an organized religion. In this situation a GOR exists where a requirement is included to comply with the doctrines of the religion or to avoid conflict with followers of that religion.

The indications in case law and other guidance would suggest that the additional GOR defence will be applied narrowly. It may be possible to apply the GOR in respect of the principal/vice-chancellor/chief executive of theological colleges, and possibly the member institutions of CCCU, but care should be taken.
It should be noted that all employment relationships are subject to the implied duty of trust and confidence which applies to both employer and employee. If an employee acts in a way which is detrimental to the employer, for example by openly flouting the ethos or mission statement of the employer, it may be possible to conclude that there has been a breach of the implied term of trust and confidence.

It would be advisable to make the ethos and mission statement of the institution clear to employees, and indeed to governors, before appointment and in contractual documents. If any action is considered unacceptable, this should be clearly stated in the disciplinary policy. We have seen examples of contracts of employment which make express reference to the character of a church HEI and to the Instrument and Articles of that institution. It is made clear that acting in a way which does not accord with these principles will be a breach of the employment contract. While it would be necessary to consider each breach of these provisions on its own merits, including such statements is good practice which we would recommend to all church HEIs who express a clear religious ethos.

**Position of students**

Equality legislation also extends to students. For example, it is unlawful for a higher education institution to discriminate on the grounds of religion or belief:

- in the terms of the offer to admit a person to the establishment;
- by refusing or deliberately not accepting an application for his or her admission to the establishment; and
- where a person is a student
  - in the way it affords him or her access to any benefits;
  - by refusing or deliberately not affording them access to them; or
  - by excluding them from the establishment or subjecting him to other detriment.

Having said this, there is a defence if the discrimination only concerns training which would help fit a person for employment which the employer could lawfully refuse (on the grounds of a GOR) to offer employment to the person in question.

It is also unlawful to discriminate in the provision of education on other grounds, including race, sex, disability and sexual orientation.

**Position of student unions**

Student unions tend to be separate organisations from their respective HEIs but this should be checked on an institution-by-institution basis.

Student unions are not expressly caught by the Religion or Belief Regulations. Given that the Regulations were implemented in order to give effect to the EU Directive which establishes a general framework for equal treatment in the fields of employment and occupation, we suggest it seems unlikely that a court would interpret the Regulations so as to extend to student unions. The Regulations may apply, however, if the particular student union is an indivisible part of the relevant institution and the union's actions can therefore be treated as those of the institution's. Additionally, service-providers will be prohibited from discriminating on the grounds of religion or belief upon implementation of the Equality Act 2006 and student unions may, in some circumstances, instead be caught by that legislation.

However, students unions are associations covered by the Race Relations Act.1

HEIs also have certain statutory duties towards their student unions as set out in the Education Act 1994.2

It has been reported in the press that one student union, the Birmingham University Guild of Students, has disaffiliated the Birmingham University Evangelical Christian Union, purportedly on the grounds of non-discrimination and the Education Act 1994, but the precise legal basis for this action is unclear.3

**Position of members of the public**

The equality legislation also applies to higher education institutions in respect of the provision of services to members of the public.4

Many of the issues require a balancing of various rights and freedoms. These are set out in a supplementary note opposite.
Supplementary note: Rights and freedoms – the general legal framework

The European Convention on Human Rights (ECHR), which has been incorporated into English law by the Human Rights Act 1998, provides individuals with an enforceable legal right to freedom of thought, conscience and religion. Individuals thus enjoy the right to:
• change their religion or belief; and
• either alone or in community with others and in public or private, manifest their religion or belief (in worship, teaching, practice and observance).

These rights are subject to such limitations as are prescribed by law and are necessary in a democratic society:
1 in the interests of public safety;
2 for the protection of public order, health or morals; or
3 for the protection of the rights and freedoms of others.

The European Court of Human Rights has recognised the importance of the values contained within Article 9:
‘...as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a ‘democratic society’ within the meaning of the Conventions. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.’

Individuals also have safeguards for freedom of expression and freedom of assembly and association. These freedoms, like freedom of religion, are qualified by specified limitations which are deemed necessary in a democratic society.

Limitations on the grounds of public order
The freedom to manifest one’s religion in certain ways is limited on the grounds of public order. A number of statutory and common law offences exist.

A recent illustration in this context concerns the prosecution of a Christian for using placards in a market place which called for homosexuality to cease and which resulted in hostility from a number of people. He was convicted by magistrates, on the specific facts of the case, under section 5 of the Public Order Act 1986 for displaying a sign which was insulting within the hearing or sight of a person likely to be caused harassment, alarm or distress. The High Court upheld the magistrates’ decision in recognising that the conviction was an infringement of his rights under Article 9 and 10 and that the magistrates had not erred in law in holding that this interference with his rights was justified by the legitimate social aim of preventing social disorder.

Within the public order offences which govern the use of language, behaviour and the distribution and display of written material, are those which incite racial hatred, namely ‘hatred against a group of persons...defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins’.

The Racial and Religious Hatred Act 2006 creates a new offence of stirring up hatred against person on religious grounds. The term ‘religious hatred’ is defined as ‘hatred against a group of persons defined by reference to religious belief or lack of religious belief’.

The new offence will apply to:
• the use of words or behaviour or display of written material;
• publishing or distributing written material;
• the publication of a play;
• distributing, showing or playing a recording, broadcasting or including a programme in a programme service; and
• the possession of written materials or recordings with a view to display, publication, distribution, inclusion in a programme service.

For each offence, the words, behaviour, written material, recordings or programmes must be both threatening and intended to stir up religious hatred. During the passage of this legislation through Parliament, the provisions for insulting or abusive words etc was dropped, as was the provision for the words etc being likely to stir up religious hatred.

The Act contains a freedom of expression provision in that the offences can not be used to prohibit or restrict discussion, debate, dislike, insults of particular religions or comments that are made urging adherence to a different religion or to cease practising a particular religion.
Some specific issues for further consideration

It is beyond the scope of this report to provide definitive advice in respect of a number of issues where there may be tensions caused by competing rights, views and interests, but a number of the current issues are highlighted here for further consideration:

• the use of an institution’s chapel for same-sex marriage or partnership when the foundation documents of the institution prescribe acts of Christian worship;
• the placing of contraceptive machines in a Roman Catholic higher education institution;
• the position of those in leadership in a faith institution where the individual’s lifestyle or conduct is at odds with the religious convictions of its founding denomination;
• the restriction of membership or leadership of Christian unions to those professing a Christian faith when others would wish for a membership open to all;
• balancing the right to freedom of speech in an academic community with a faith foundation when the exercise of freedom of speech may be deeply offensive;
• respecting the religious convictions of other faiths and considering fully any areas where these might be compromised.

Both the European Court of Human Rights and the House of Lords have recently considered the highly sensitive issue of an individual’s right to manifest his or her religious belief. In reaching its decision that a ban on wearing Islamic head-scarves in photographs that accompanied degree certificates awarded by higher education institutions in Turkey was justified on the basis of being necessary in a democratic society, the European Court of Human Rights took into account the secularist principles of the Turkish Republic. More recently, the House of Lords has held that it was lawful for Denbigh High School to enforce a school uniform that did not permit a student to wear a jilbab. The majority of their Lordships did so on the basis that the school’s uniform rule did not interfere with the individual’s right to manifest her religion and all agreed that even if it did, the school’s decision was objectively justified. Determining whether similar policies would be unlawful is a complex task, as the law lords made clear that the above cases turn upon their particular facts.

1 Section 25.
2 Section 22.
3 The Times, 25 January 2006.
5 Article 9.
7 Article 10.
8 Article 11.
10 Sahin (Leyla) v Turkey (Application no 00044774/98, 10 November 2005)
11 R (on the application of Begum (by her litigation friend, Rahman)) v Headteacher and Governors of Denbigh High School [2006] UKHL 15

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Most church HEIs operate on internal review procedures, invariably via the office of the clerk, to support their appointment process in respect of governors’ professional backgrounds and the range of skills they possess. This helps to secure an appropriate balance of skills.

Often an enquiry pro-forma is sent to a prospective governor – or information gathered through face-to-face meetings – with a view to advice being made available to the nominations committee. These committees exercise an important function in framing proposals for governing bodies in respect of the appointment of governors, including those drawn from the church.

The following listing, which is not exhaustive, illustrates the range of skills seen to be relevant:

- audit
- HE teaching/research/scholarship
- charities
- insurance
- Church ministry/missions
- information technology
- directorship
- legal
- education
- management
- estates
- personnel
- finance
- procurement
- governance
- health & safety
- health and social care.

Below are copies of documents typically used to assist in this work, reproduced with the permission of the three HEIs concerned: Roehampton University; St Martin’s College, Lancaster; and the University of Winchester.

See also section B § 1.11 of the main report and appendix 4.

Some church HEIs make use of non-governor members on committees of the governing body as a way of introducing important skills.

Appendix 6 example (a) provided courtesy of Roehampton University

Background information on Roehampton University for members of the University Council

Our vision:

“Challenging, inspiring and supporting students to grow as individuals and to be responsible citizens and leaders in a complex world”

Background information on the university

Roehampton University is located on a beautiful and historic campus in South-west London. It gained university title in August 2004. Before then it was part of the University of Surrey Federation and was known as the University of Surrey Roehampton.

Roehampton has developed a distinctive vision focused on challenging, inspiring and supporting students to grow as individuals and to be responsible citizens and leaders in a complex world. We are driven by an ambitious academic strategy, aimed at embedding a culture of excellence, innovation and aspiration in both teaching and research. The University agreed a Vision in December 2004 and now seeks to put this into action through the a new strategic plan agreed in April 2006.

The University has 6,600 undergraduates and over 1,000 postgraduates. 12% of students come from outside the UK and some 59% show one or more characteristics of a background with little or no prior experience of higher education. Applications continue to rise and the ratio of applications to places now stands at over 4 to 1.

Roehampton is a collegiate university with four Colleges, each of which is separately constituted (usually as a trust with charitable status). Three colleges have religious foundations: Digby Stuart (Catholic), Southlands (Methodist) and Whitelands (Anglican). Froebel College is founded on the principles of the pioneering German educationalist, Friedrich Froebel.

The University has a growing reputation for excellence in its four academic Schools: Arts, Business and Social Sciences, Education, and Human and Life Sciences. Each School is led by a Dean, who reports to the Deputy Vice-Chancellor.

The University received a positive ‘Broad Confidence’ report as a result of its QAA Institutional Audit in
December 2003. Its support for students and the richness of the student experience were highlighted as features of good practice. The University was recently awarded £4.5m for a Centre of Excellence in Teaching and Learning (CETL) in Human Rights and Citizenship. Our modular system allows students an unusual flexibility and range of choice in combining subjects.

Each of the four Schools has a growing research profile. It is expected that we will improve on the 2001 RAE performance, when over half the academic staff were submitted. In 2001 History and Anthropology were Grade 5, English, Theology and Religious Studies and Dance were Grade 4, with Dance receiving a starred 4. Drama, Education, Music, Psychology and Sociology were rated 3a.

Roehampton employs over 1,200 staff in lecturing, administrative/technical and manual grades. In June 2004 the University was recognised as an Investor in People (IIP). We have now developed an Internal Review Team to ensure that we maintain the standard over the following three years. Central services offer a comprehensive range of development and training opportunities and there is a certificated programme for new lecturers, giving HEA (Higher Education Academy) membership, together with other programmes designed to enable staff to keep in touch with developments in teaching and learning. There is also a comprehensive programme of induction to the University for all new staff in their first year of appointment.

One of Roehampton’s assets is its location – near enough to enjoy the city but far enough away to escape from it. Its campus is situated on two attractive parkland sites six miles from central London, and very close to Wimbledon, Putney and Richmond Park. The North Site (Digby Stuart, Froebel and Southlands Colleges) on Roehampton Lane is about 15 minutes’ walk from Barnes railway station. The South Site (Whitelands College) is located on the Parkstead site in Roehampton Village and is a 5 minute walk from the North Site. Both campuses are serviced by a number of local buses, which run from Hammersmith Underground, Putney Bridge Underground, Kingston, Wimbledon and Clapham Junction. They can also be easily reached by road. They are on the A306, between the A3 and the South Circular (A205) which together serve the M1/M3/M4 and M25.

The University is proud of the quality of its teaching and research, of its facilities and of the achievements of its students. It is at an exciting stage in its development and plans to build on these strengths to become a distinctive and successful university.

Professor Paul O’Prey took up the appointment of Vice-Chancellor on September 1, 2004. The Vice-Chancellor is supported by a newly formed University Executive Committee, consisting of Professor Jane Broadbent, the Deputy Vice-Chancellor and responsible for all academic matters; Andy Masheter, Chris Cobb and Dr Peter Briggs, Pro Vice-Chancellors responsible for all aspects of the administration and central services; and Simon Attwell, Director of Financial Strategy.

The Role of Council and Members of Council

The Council is the governing body of the University and carries responsibility for ensuring the effective management of the University and planning its future development. It has responsibility for the overall educational character and mission of the University and has ultimate responsibility for the affairs of the University. The Council is entrusted with funds, both public and private, and therefore has a particular duty to observe the highest standards of corporate governance. It also has a duty to enable the University to achieve and develop its primary objectives of teaching and research. It monitors the performance of the University against its Strategic Plan and targets and is responsible for the solvency of the University and safeguarding its assets.

Members are appointed to bring their skills, knowledge and expertise. Members must have a sympathy with and understanding of the purposes of higher education. They must also be in sympathy with the vision and mission of the University and be able to understand Roehampton’s strategy and policies and question these constructively.

Members of Council act in a voluntary capacity and as individuals rather than representatives of any group or interest. They also have to take appropriate steps to avoid putting themselves in a situation where there is actual or potential conflict of interest. Members are asked each year to make a formal declaration of interest statement, which is held by the Clerk and available for inspection on request.

36 Appendices Matrix of skills for governors
The Conduct of public business
(extract from the Committee of University Chairmen, Guide for Members of Governing Bodies, April 2001)

Governing Bodies are entrusted with public funds and therefore have a particular duty to fulfill the highest standards of corporate governance at all times, and to ensure that they are discharging their duties with due regard for the proper conduct of public business. Institutions of higher education were included among the public spending bodies examined by the Committee on Standards in Public Life, and consequently members of governing bodies should observe the Seven principles of Public Life drawn up by the committee. These principles are as follows:

• Selflessness. Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefit for themselves, their families or their friends.

• Integrity. Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

• Objectivity. In carrying out public business, including making public appointments, awarding contracts or recommending individuals for reward or benefits, holders of public office should make choices on merit.

• Accountability. Holders of public office are accountable for their decisions and actions to the public and must themselves to whatever scrutiny is appropriate to their office.

• Openness. Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

• Honesty. Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

• Leadership. Holders of public office should promote and support these principles by leadership and example.

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The Roehampton University Council

The Council has 23 members of whom 8 are drawn from the Governing and Providing Bodies of the four Colleges. The remaining 15 are made up from 11 Independent members*, plus the Vice-Chancellor, 2 staff members (elected) and 1 student member. The current Chair of Council is Michael Young.

* Independent is held to mean a person not employed by the University and not a student or a member of a College.

The Council is serviced by the Clerk to the Council. Other key members of staff, such as the Deputy Vice-Chancellor, Pro Vice-Chancellors and the Director of Financial Strategy are normally in attendance at the meetings, without voting rights.

The University is an incorporated body. The business of the Council is conducted in accordance with its Memorandum & Articles of Association (approved by the Privy Council) and the Council Regulations.

Involvement of Council members

Council members attend Council meetings, normally held 4 times a year, although there may be a requirement for additional meetings from time to time. Dates of the Council Meetings are agreed at the last meeting of the academic year, for the following academic year. At present Council meetings are held at the University at 4.30 pm and last for approximately 2 hours.

The Council also delegates responsibilities for certain of its functions to a range of standing committees. Members of Council are usually asked to sit on, and perhaps chair, at least one of these committees. Membership of standing committees often also includes persons from outside the University, invited for their particular expertise or interests. These committees are as follows:

- Finance & General Purposes Committee
- Audit Committee
- Employment Committee
- Estates Committee
- Remuneration Committee
- Nominations Committee
- Student Disciplinary Committee (meets as required)
Meetings of these committees take place at various times of day, but usually at a frequency similar to and related to the Council cycle. Meetings are usually held on University premises.

Members of Council are expected to attend the meetings of the Council (and the standing committees to which they are appointed) or to relay their apologies to the relevant clerk or secretary if unable to attend. The Council retains the right to seek advice from members unable to attend for several meetings as to their intention to continue in the role.

Members are also invited, if they have a special interest, to consider becoming a member of a leading University committee, for example Diversity & Equal Opportunities or Strategic Planning & Resources Committee.

Council members are expected to commit some additional time to attend development events – usually a day and a half residential conference is held each year – and induction events in their first year.

Members are also expected to spend some other time at the University in order that they are familiar with its activities and are always welcome at events such as degree congregations, inaugural lectures and performances.

Members of Council are recommended to Council by the Nominations Committee and usually serve for three years initially, with a possibility of re-appointment for a further three-year period via the Nominations Committee if appropriate, subject to retirement rules at the age of 70. The positions are not remunerated although travelling expenses are reimbursed. Further advice on details of requirements and responsibilities of Council members can be obtained from the Clerk to the Council, Helen Fairfoul at Downshire House, Roehampton Lane, SW15 4HT.

Roles of key appointments on Council

Chair of the Council
The Chair of the Council maintains regular contact with the Vice-Chancellor of the University and the Clerk to the Council, and presides at meetings of the Council. In this role the Chair must ensure that a full and fair airing is given to the major business of the University without undue bias in favour, or to the detriment of, any area, constituency or member. In the event of a vote at the Council the Chair must ensure appropriate formalities are adhered to. The Chair is the ultimate guardian of the business of the meeting, and oversees the production of the Council agenda in collaboration with the Clerk. The Chair is authorised to take action on behalf of Council on certain matters that may arise between meetings of the Council, with such action to be reported to the next meeting of Council. The Chair of Council also chairs certain standing committees of Council and appraises the Vice-Chancellor.

Vice-Chair of Council
The major role of the Vice-Chair is to deputise for the Chair of Council as required, and to preside at Council meetings in the absence of the Chair. In such situations the Vice-Chair must also arrange to brief the Chair of Council of major developments and business at the earliest opportunity.

Further information on Roehampton, including its governance and management, can be found on the website: http://www.roehampton.ac.uk/about/councilmembers.asp

Clerk to Council
Last updated June 2006
Appendix 6 example (b) provided courtesy of St Martin’s College

Expectations of members of the governing body

1. Primary responsibilities

The main responsibilities of the Governing Body of the College are set out in the description of roles and responsibilities of Governors. The core expectation of Governors is that they should carry out these responsibilities conscientiously, and act at all times in the best interests of the institution as a whole.

Governors need to bring particular behaviours to the Governing Body. They should question intelligently, debate constructively, challenge rigorously and decide dispassionately, and they should listen sensitively to the views of others, inside and outside meetings of the Governing Body.

2. Advisory and representational responsibilities

i) Governors are actively encouraged to spend time understanding the academic work and profile of the College.

ii) They are also encouraged to make and sustain links with the Principal and senior executives in order to offer their experience and advice on an informal basis, particularly where it is directly relevant to the work of one of the major faculties or support functions of the College.

iii) Governors may also provide introductions and links externally to other sources of expertise and advice in support of the work of the College.

iv) Governors are expected to act as ambassadors for St Martin’s in the region, and to contribute to raising the regional profile and understanding of the work of the College.

v) Governors may also be asked to take part in debates and discussions at national level, and to influence the national higher education agenda in the interests of Church Colleges.

vi) Governors are expected to attend key College functions (e.g. degree ceremonies).

3. Time Commitments

i) Governing Body

The Governing Body currently meets 6 times a year on a regular schedule which is agreed for three years in advance. The Governing Body also holds at least one ‘awayday’ session each year to debate key strategic issues in more detail, and it is important that Governors are able to attend and contribute to these sessions.

ii) Committees

There are a number of standing committees of the Governing Body, most of which currently meet 4 times a year. The key committees are Finance and General Purposes; Staffing and Employment; Audit; Remuneration; Nominations. In order to spread the workload fairly and to meet quoracy requirements, each lay Governor is expected to be a member of at least one of these committees.

iii) Chairs of Committees

Time requirements for chairs are broadly similar, but chairs are expected to liaise between meetings with relevant senior managers and/or Governors to plan, review and expedite business relating to the remit of the committee they chair.

iv) Working groups

Governors may also be asked, from time to time, to contribute their expertise and ideas to working groups or task forces on issues, particularly strategic issues and issues of major academic development, where the input and perspective of Governors as well as staff would be valuable.

September 2006
Appendix 6 example (c) provided courtesy of the University of Winchester

Board of governors
Members’ skills and experience
The University is keen to ensure that the collective skills and experience of its Governors is sufficiently deep and broad to ensure that the issues before the Board of Governors are considered appropriately. It is therefore important for some register of skills and experience to be kept so that a view can be taken by, for example, the Nominations Committee when new appointments to the Board are being considered.

The responsibilities and role allocated to Governors in the Articles cover six board areas:
• Educational character, Mission, Vision, oversight of activity;
• Finance and Resources including Estates;
• Senior post holders: appointment, conditions of service, appraisal and dismissal;
• Pay and conditions of Staff;
• Conduct of Staff;
• Students

Please find below some questions which reflect the responsibilities of the Board. I would be pleased if you would complete this questionnaire and return it to me at your earliest convenience. Please interpret your skills/experience broadly. Any details you are able to supply would be much appreciated – for example ‘Headteacher of primary school for 10 years’ or ‘Qualified accountant with VAT expertise’

If you have any queries please do not hesitate to contact me.

Clerk to the Governors
May 2006

Board of governors
Members’ skills and experience questionnaire

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No – but* = if there is a particular area in which you have little or no experience but would be interested to know more please tick this box and the Clerk will follow this up with you.

NAME:  DATE:
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