Consultation: Draft Higher Education Code of Governance

**Consultation Submission Form**

**Introduction**

The Higher Education Code of Governance was developed to support Higher Education Institutions (HEIs) in delivering the highest standards of governance across their institutions. The Code specifies that, in consultation with the sector, a review is undertaken every four years to ensure that the Code remains fit for purpose and offers a sound framework for governance practice across the sector.

This paper provides information on the context for the recent review, the review approach and the revised Code. It also includes a series of consultation questions.

We would be grateful if you could take the time to complete the consultation questionnaire. The latest date we can accept questionnaires is at **12:00 on Friday, 13 March** **2020.**

Please note that all responses to the questionnaire will be treated as confidential and no individual or institution will be named in any analysis or reporting of the findings.

We very much appreciate your support and look forward to receiving your response.

**General Data Protection Regulation and Data Protection Act 2018, Processing of Personal Information:**

The personal information that you provide (name, email address) will be used purely for the purpose of analysing your response to the questionnaire. Your data is stored on the CUC’s secure database and the CUC will not disclose it to any other parties.

**If you have any questions about this consultation or Code of Governance, please contact Amanda Oliver at** **office@universitychairs.ac.uk****.**

**Context**

The current review comes at a time of unprecedented change and uncertainty in the Higher Education operating environment. Brexit, funding pressures, regulatory change, increased competition, technological advances, disruptions, challenging public perceptions about the value of HE and the growing narrative around the need for a market-orientated system are just some of the challenges facing universities. These challenges mean universities are operating in an increasingly commercial way with many becoming more global in their operations and carrying greater risks.

The dramatic and rapid changes in the Higher Education sector has firmly placed the spotlight on governing bodies who need to be alert to, and quickly assess, the myriad of risks and opportunities facing their university in a competitive and volatile market. A different lexicon is now being used in board rooms and ‘agile and action-orientated’ have been words used to describe behaviours governing bodies will need to adopt to meet the challenges of sustainability, growth and financial diversification whilst still striving for excellence.

Universities are naturally at different stages of evolution depending on their heritage so for some governing bodies, these challenges and expected behaviours will mean a rethink and enhancement of their role; for others it may involve introducing new skills and more diversity; whereas others may simply view it as ‘business as usual’.

As the higher education landscape continues to develop, with new and potentially more complex corporate organisational structures and constitutional forms emerging we can expect the diversity in the sector to increase and each institution’s response to changes to be equally diverse.

It is against this backdrop that the CUC has developed a revised Higher Education Code of Governance.

**Draft Code**

In drafting the revised Code, the CUC has undertaken extensive consultation with CUC members and stakeholders to gain feedback and insights on the value of the 2014 Code, how it was used and areas for improvements. More specifically the review methodology comprised:

* A literature review which considered international and global trends in corporate governance; Codes of Governance in the commercial, third and public sectors; and emerging thought leadership on governance practice
* A call for evidence to CUC members and stakeholders to gain feedback and insights on the value of the 2014 Code
* Stakeholder meetings to test ideas
* Data analysis and hypothesis testing with discussion/focus groups.

The draft Code is shorter and more concise than previous editions although many of the values of good governance still endure. There is a changing focus from the processes associated with good governance to the behaviours and relationships required to ensure their effectiveness in practice.

The draft Code also aims to better reflect the richness and diversity of institutions and the need to ensure governance arrangements are proportionate and can apply to institutions irrespective of their size, complexity and legal form. For similar reasons the draft Code does not include references to specific regulators in the devolved nations.

The Code focuses on the foundations for good governance which institutions adopting the Code ‘must’ apply or explain. More detailed guidance will be provided in a Governance Handbook. A copy of the draft Code of Governance and the proposed content of the Handbook can be accessed [here](https://www.universitychairs.ac.uk/he-code-consultation).

**Personal Details**

1. Name *(required)*: Alex Bols
2. Contact telephone *(required)*:
3. Contact email *(required)*:
4. Would you be happy to be contacted to discuss and clarify any of your responses? *(required)*

[x]  Yes

[ ]  No

1. In what capacity are you responding to this consultation? You may select only one option. *(required)*

[ ]  Member Chair of CUC

[ ]  Publicly funded higher education provider

[ ]  Alternative higher education provider (with designated courses)

[ ]  Alternative higher education provider (no designated courses)

[ ]  Further education college

[ ]  Body representing students in higher education

[x]  Representative organisation, business, or trade body

[ ]  Central/local government, agency or body

[ ]  Individual

[ ]  Trade union or staff association

[ ]  Charity or social enterprise

[ ]  Other

5a. If you selected other, please specify:

1. Please state the name of your institution or organisation *(required)*. If you are responding as an individual, please enter N/A.

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1. Please state your location *(required)*:

[ ]  England

[ ]  Northern Ireland

[ ]  Scotland

[ ]  Wales

[x]  Other

7a. If you selected other, please specify:

**UK-wide organisation**

**Consultation Questions**

Overall the feedback received on the 2014 Code was positive with the majority of respondents using the Code and believing it provided a robust framework for governance practice. However, concerns were raised about the length of the document and the tendency to conflate principles, mandatory requirements and optional practice. The revised Code has been produced with this in mind and is shorter and more concise than the previous edition. The Code does not try to differentiate mandatory principles from suggested provisions and in this respect is a departure from other Codes. Instead the Code focuses on the foundations for good governance which institutions adopting this Code ‘must’ apply or explain. More detailed guidance and illustrative practice will be provided in the governance handbook which will include templates and questions for institutions to consider when implementing the various elements of the Code.

**Please indicate whether you agree or disagree with the following statements and provide an explanation in the comments box. There is no word limit on responses.**

1. The revised Code is an appropriate length.

[ ]  Strongly Agree

[ ]  Agree

[ ]  Disagree

[ ]  Strongly Disagree

[x]  No opinion

Comments:

The Code is clearly much shorter than previous iterations and is very much a headline, principles-based document. This is clearly intended to enable the Code to be considered UK-wide – however higher education institutions in different devolved nations will need to consider the Code in the context of their legislative and regulatory environment - and also apply to the increasing diversity of higher education providers, which as an over-arching ambition should be welcomed. However, it will be important that the Handbook(s) that sit alongside the Code should contain the kinds of examples, evidence and actions that made the previous Code so useful.

It will be worth considering whether there is a single Handbook covering all providers or whether there might be useful segmentation, either by theme, nation or type of provider/governance structure.

It is however also worth reminding ourselves that the previous system of a short code and a lengthy handbook was something that the CUC has previously moved away from and it might be preferable to have a single code document with short examples of “how to” (i.e. the current style).  We are concerned that the proposed Handbook could be rather lengthy.

1. The revised Code sets out clearly the foundations of good governance in an appropriate way.

[ ]  Strongly Agree

[x]  Agree

[ ]  Disagree

[ ]  Strongly Disagree

[ ]  No opinion

Comments:

The Code objectives are underpinned by views on what future higher education governance will need to deliver if it is to meet the challenges of sustainability, growth and change. The objectives are to:

* Support the delivery of the provider’s mission and success;
* Maintain, and enhance, trust in high education providers in delivering public benefit and contributing to economic and social growth;
* Protect institution autonomy;
* Manage risk effectively to sustain reputation and provide the flexibility and agility to respond to opportunities;
* Promote and develop diverse and inclusive practices;
* Have meaningful engagement with relevant stakeholders locally, regionally and nationally.
1. Do you agree these are the right objectives?

[ ]  Strongly Agree

[x]  Agree

[ ]  Disagree

[ ]  Strongly Disagree

[ ]  No opinion

Comments:

Broadly the objectives are fine. However, we would suggest a few minor tweaks to the wording:

The second bullet point there is a typo – “high” rather than “higher”.

We would also suggest you end that bullet after “public benefit”, so that it reads “Maintain, and enhance, trust in higher education providers in delivering public benefit.” The second half of the bullet “and contributing to economic and social growth” should be an outcome of the first part of the bullet, rather than a direct outcome and is dependent on the public funding environment and so we would suggest deleting it.

The third bullet on institutional autonomy should be linked to an outcome for institutional autonomy, eg the previous Code had “Autonomy as the best guarantee of quality and international reputation”.

It is also worth noting that the objectives are probably aims – i.e. intentions rather than outcomes.

1. Do the values outlined in the Code represent an appropriate set of values for the Higher Education sector?

[ ]  Strongly Agree

[x]  Agree

[ ]  Disagree

[ ]  Strongly Disagree

[ ]  No opinion

Comments:

The Values are broadly appropriate but I would suggest that there will be a number of providers, particularly newer entrants, for whom “research” may not be a core value and so you might want to consider tweaking the wording to “Provision of high-quality teaching and scholarship (and where appropriate research).”

1. Do you agree that the six primary elements of the Code constitute an effective framework for good governance practice across the Higher Education sector?

[ ]  Strongly Agree

[x]  Agree

[ ]  Disagree

[ ]  Strongly Disagree

[ ]  No opinion

Comments:

The Sustainability Primary Element text on page 6 should be flipped so that receiving assurance that delivery of the strategic plan is in line with institutional values and wider institutional policies comes first and then that it is in line with legislative and regulatory requirements. This would just properly prioritise institutional values ahead of regulatory requirements.

1. Are there any elements you think are missing in the revised Code?

[x]  Yes

[ ]  No

[ ]  No opinion

13a. If yes, please state:

It would be worth considering how environmental sustainability is reflected in the Code. The only reference currently is in 2.11 in response to conditions from regulatory and funding bodies and other major institutional funders rather than as an issue that governors should be considering in a wider context, particularly in the “Sustainability” element.

Given the political interest in freedom of speech it would also be worth making more explicit reference to this. The current reference in the draft Code are only within the context of academic freedom. The OfS Public Interest principles makes reference to *“The governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider.”* and something closer in language should be considered.

1. Broadly, do you agree that the requirements/content listed under each Element constitute a solid framework for good governance practice for all Higher Education providers?

[ ]  Strongly Agree

[x]  Agree

[ ]  Disagree

[ ]  Strongly Disagree

[ ]  No opinion

14a. If not, what changes need to be made?

Under “Element 3 Reputation” there is an interesting question for privately owned providers relating to clause 3.1 which says board members have to follow the Nolan principles. These principles were defined specifically as values for the public sector, and private providers shouldn’t be asked to follow them. A recommendation that a private provider adopt its own code of ethics enshrining the spirit of the Nolan principles - in a manner which works for the particular provider - might be a good alternative?

1. Lastly, although we have identified specific issues on which we have invited comment, we are happy to consider any area of the draft Code which you think needs development?

Most of the elements of the OfS’ Public Interest Principles are embedded in the Code at various points, but it would be important to ensure that the OfS consider that compliance with the revised Code would meet their public interest governance principles and ongoing conditions of registration. Unless OfS is fully on board there is a significant risk that the value of the Code will be diminished. For example in paragraph 5.13 there is no indication for how often there should be a review of governance effectiveness. Most Codes – e.g. the UK Corporate Code – offer a timeframe against when this should happen, is this something that the OfS might expect more clarity on?

1. Do you have any final comments to make with regards to the draft Code?

Paragraph 5.8 describes the role of Senior Independent Director (SID) which seems to be predicated on a corporate model (where independent governors are in the minority). It would be worth reflecting on the value that this role would bring to most governing bodies where there is already a majority of governors are non-executive (independent).

We are not in favour of a SID.

Although para 5.8 suggests the governing body “should consider whether it is beneficial to appoint a SID”, the framing of the content of the paragraph suggests the default assumption is that there should be such an appointment. If the intention is to make the appointment of the SID optional the wording of the paragraph should be amended.

More generally, the draft Code needs a good edit. There are numerous places, where expression could be improved and made more concise. Further, the terminology alternates between “institution” and “provider” (and the associated use of HEI and HEP).

There are also several places where content of the Code appears to offer a view as to what action might be taken in the event of a particular requirement not being met. E.g. para 3.4 “Breaches will be taken seriously and will be dealt with in accordance with the provider’s Code of Conduct.” Is this not crossing the line and offering guidance as to what should happen? Is this not what the accompanying Handbook is intended to deal with?

There was also a wider point if this Code becomes a requirement for OfS registration that Colleges already follow the AoC Code of Good Governance and this would provide them with a second code to follow. The voluntary nature of the Code needs to be strengthened and how it interplays with other Codes.

1. Do you have any comments with regard to this questionnaire for the CUC?

Thank you very much for taking the time to complete this survey.

If you have any queries, please do not hesitate to contact Amanda Oliver at office@universitychairs.ac.uk.