



ACADEMIC **AUDIT** ASSOCIATES LTD

# **THE CONDUCT OF ACADEMIC GOVERNANCE**

**A DISCUSSION NOTE**

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## **ACKNOWLEDGEMENTS**

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## **The Authors**

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## **PART I**

### **PRINCIPLES OF ACADEMIC GOVERNANCE**

#### **What is academic governance?**

Academic governance can be distinguished from corporate governance by its subject matter (policy and procedures for academic matters), by how it is conducted and by whom it is conducted. It has two chief functions the balance between which may vary from provider to provider. One is governing, that is deciding between alternatives in academic policy, practice and outcomes. The other function is overseeing: ensuring that responsibilities for academic matters that the provider's constitution assign to its senior academic body, or tasks that the latter has delegated, have been discharged properly and lawfully and in accordance with the provider's policies and procedures. As a basis for discussion, this Note adopts the following definition

‘Academic governance consists of the structures, processes and regulatory frameworks in each provider of higher education through which academic matters are decided and overseen by academic staff, advised and supported by their administrative colleagues and by students.’

This definition recognises that academic governance is a collegial matter that requires the participation of staff involved in the support of learning, and of students, but that in academic governance the principal responsibility for making decisions and recommendations that depend on academic judgments lies with staff who are qualified to make the relevant decisions.

## External expectations

The impulse to draw up this Note has come from the notable increase in expectations on the part of regulators of what academic governance should be achieving. It is therefore surprising that academic governance, and what is expected of it, has not attracted more attention from those most concerned in its processes and outcomes. Indeed, Michael Shattock's *Good Governance in Higher Education*<sup>1</sup> and Dennis Farrington's and David Palfreyman's *The Law of Higher Education*<sup>2</sup> are among the few sources of practical guidance for UK practitioners on how to design academic governance arrangements<sup>3</sup> and make sound and effective decisions and recommendations through these arrangements.

This Discussion Note focuses chiefly on expectations for academic governance in higher education providers in England and Northern Ireland. However, much of its contents will also be relevant to the academic governance of higher education providers in Wales and in Scotland, despite the different arrangements in place for Scottish higher education.

Sound, effective academic governance assumed new significance for universities in 2014, with the publication of the *Higher Education Code of Governance* by the Committee of University Chairs (the *CUC Code*). Despite being voluntary, the CUC Code was the core around which the Higher Education Funding Council for England (HEFCE) subsequently constructed its *Revised operating model for quality assessment* (the ROM).<sup>4</sup> At the heart of the ROM is the observation that through their status in charters, statutes, and articles, university councils, governing bodies and their equivalents are ultimately responsible for the acts and omissions of higher education providers in their entirety, including those relating to the key activities of teaching, learning and research.

The design of external assessment in the ROM places primary responsibility on individual governing bodies (rather than on an external agency, such as the QAA), for assuring HEFCE and others that the core academic business of their institutions is carried out effectively. The governing body must therefore assure HEFCE that the quality<sup>5</sup> of teaching and learning and their improvement, research, and the standards<sup>6</sup> that are used to judge academic achievement, are subject to effective oversight through academic governance. In line with the CUC Code, HEFCE expects governing bodies to do this by working with senates, academic boards and their equivalents in alternative higher education providers (senior academic bodies). The underlying intent is that governing bodies will become as actively and critically engaged in overseeing the effectiveness of providers' academic governance as they continue to be in overseeing their planning, strategies, human and other resources and finance.

### **Academic governance and the *Revised operating model for quality assessment***

The introduction of the ROM has profound implications for reciprocal relations between governing bodies, chief executives and their teams, and senior academic bodies. This Note considers how individual governing bodies can assess whether the conduct of academic governance is effective and consistent with national expectations<sup>7</sup> within such a reciprocal context. This is particularly important where members of governing bodies may not be familiar with academic governance and the demands now being placed on it.

The increased focus on corporate and academic governance in the ROM reaches out beyond established universities and colleges with awarding powers to all those wishing to enter the higher education sector as alternative providers; existing alternative providers with fewer than two successful external reviews by QAA; those required to report to a regulator on their 'financial sustainability management and governance' (FSMG), and those aspiring to become awarding bodies in their own right.<sup>8</sup>

### **Identifying effective academic governance**

The CUC Code advises governing bodies to work closely with their senates and academic boards (senior academic bodies) in order to assure themselves that academic governance is effective. At the same time they should respect 'the role, as defined within charters, statutes or articles, of the Senate/Academic Board and other bodies involved in academic governance'.<sup>9</sup> This prompts the linked questions:

- how are governing bodies to understand a provider's academic governance in its context, and
- how are they to judge its effectiveness?

In January 2017, the CUC reiterated in its third 'Illustrative Practice Note'<sup>10</sup> (IPN 3) that the underlying principles of sound academic governance are based on 'collegiality'.<sup>11</sup> 'Collegiality' is a term which features prominently in the CUC Code, but which the CUC could usefully encourage providers to define within their individual contexts (see below, p.8).

IPN 3 proposes that governing bodies should look to the academic governance structures that each provider has adopted (or that are prescribed for them) to assess whether they are fit for their particular purposes (see below). Academic governance structures should also enable the provider to report to the governing body on students' academic experience and its continuous improvement, and the reliability of degree standards, as required by the ROM.<sup>12</sup> IPN 3 therefore describes the academic governance structures typical of universities and demonstrates for the benefit of governing bodies how delegation in these providers enables senior academic bodies to conduct large volumes of business, and have matters

thoroughly analysed and discussed, before decisions are taken and recommendations made.<sup>13</sup> Understandably, the CUC Code and IPN 3 do not discuss effective academic governance arrangements for alternative providers, or for further education colleges (colleges) that provide higher education, because the focus of CUC, as a membership organisation, is on universities, rather than on providers with different missions and corporate and educational arrangements.

### **Academic governance in colleges and alternative providers**

Increasingly regulators and their agents appear to expect that colleges providing higher education, and alternative providers which are not awarding bodies, should follow the CUC Code in their own, often very different contexts. For example, in its recently adopted *Quality Review Visit Handbook*, QAA identifies the CUC Code as part of the 'baseline expectations' for, by implication, all higher education providers.<sup>14</sup> Hence the diffusion of expectations for governance as described in the CUC Code, which was developed for universities, into those parts of the college sector providing higher education. Likewise, in the absence of an equivalent for alternative providers, it appears that the CUC Code is shaping expectations for their corporate governance arrangements and how they work with academic governance. This is despite the context for academic governance in alternative providers being very different from that of universities and colleges.

### **Academic governance in colleges providing higher education**

In March 2015, the Governors' Council of the Association of Colleges (AoC), the membership organisation for further education colleges, published its 'Code of Good Governance for English Colleges'. Adherence to this Code is voluntary, as with the CUC Code<sup>15</sup>. However, it urges each college governing body to monitor the implementation of policies and strategies 'through constructive and supportive challenge' of its executive<sup>16</sup>, and to 'ensure appropriate mechanisms are in place for effective oversight of the quality and inclusivity of the learning experience.'<sup>17</sup> There is, though, no equivalent in the Code of Good Governance for English Colleges (the AoC Code) to Element 4 of the CUC Code, with the latter's emphasis on the need for university governing bodies to assure themselves of the effectiveness of the institution's academic governance.

Colleges providing higher education are required to report periodically to their regulator on their FSMG arrangements. Colleges with Foundation Degree Awarding Powers (FDAP) or Taught Degree Awarding Powers (TDAP) will also have had to meet a set of requirements as part of the scrutiny processes through which they gained awarding powers. They will have demonstrated that:

- that they are ‘governed, managed and administered effectively, with clear and appropriate lines of accountability for [their] academic responsibilities’;
- that ‘appropriate safeguards are in place to ensure that financial exigencies and other pressures do not jeopardise academic standards or the quality of programmes’<sup>18</sup>, and
- that they form a ‘cohesive and self-critical academic community’.<sup>19</sup>

Colleges that have achieved degree awarding powers are thereafter expected to adhere to Part A of the Quality Code, which states that ‘authority and responsibility for setting and maintaining academic standards is vested in the senior academic authority [...] of the degree-awarding body.’<sup>20</sup>

### **Academic governance in alternative providers**

Many alternative providers conduct their activities through limited companies, with a few operating on a ‘not-for-profit’ basis or as registered charities. Where a higher education provider is both a limited company and a registered charity it will be subject to the requirements of the Charities Act (2011) the Companies Act (2006)<sup>21</sup> and be overseen by the Charity Commission.<sup>22</sup>

Independent higher education providers that are not registered charities and operate in the UK through limited companies are required to conduct their business in accordance with the provisions of the Companies Act (2006) and other relevant legislation.<sup>23</sup>

Additionally, all higher education providers, including alternative providers, must conform to the requirements of the Competition and Markets Authority.<sup>24</sup> Depending on their individual circumstances, large providers may also be subject to the UK Corporate Governance Code (2016) which is, in any case, an additional helpful source of guidance on the principles of corporate governance.<sup>25</sup>

As with colleges that have attained FDAP or TDAP, alternative providers that have acquired degree awarding powers will have done so through processes that require them to follow the Quality Code and meet the requirements of Part A of the Code by establishing a senior academic body. There is, therefore, a case to be made that the governing bodies of these providers should treat the CUC Code as a key point of reference for matters of corporate and academic governance.

As noted above, there is as yet no equivalent of the CUC Code for alternative providers, but in its *Quality Review Visits Handbook*, QAA has stated that the CUC Code, together with the FSMG requirements of the relevant regulator, should form part of the relevant ‘baseline regulatory requirements’ against which providers will be reviewed.<sup>26</sup>

Higher education providers that are limited companies may, however, need to treat the Elements of the CUC Code as a point of reference rather than a set of requirements. For example, Element 7.1 of the CUC Code requires of universities that their governing bodies 'have a majority of external members, who are independent of the institution' [our emphasis].<sup>27</sup> The board of directors of a small alternative provider may find that such an arrangement is not practically or commercially viable. They should, however, be able to follow the remainder of the Element, which outlines the duty of members of governing bodies to 'question intelligently, debate constructively, challenge rigorously, decide dispassionately and be sensitive to the views of others both inside and outside governing body meetings'.<sup>28</sup>

### **Alternative providers, awarding bodies and academic governance**

When alternative providers that have not secured degree awarding powers are working with an awarding body the latter will normally check the alternative provider's corporate governance arrangements when undertaking due diligence enquiries, and before entering into a formal agreement to work together. Such enquiries may, however, focus on finance and resources: checks on the corporate governance of limited companies may be confined to consulting the records of Companies House.

Awarding bodies that work with alternative providers may require them to adopt particular academic governance arrangements, such as course committees or assessment boards. Some awarding bodies may also require partners to have a senior academic body to which they can delegate aspects of their authority for academic matters.<sup>29</sup>

### **Duties of the directors and board of a limited company as a governing body**

The directors of a limited company which is not a registered charity must work within the law as it applies to the company and within its constitution (its articles, resolutions and agreements) in order to promote its success and its reputation.<sup>30</sup> The membership and constitution of a company's board of directors will normally be stated in its articles or be set out in resolutions of its board. For a limited company that is a higher education provider this is where, in addition to matters such as the size and membership of the board of directors, the board's relationships with the provider's senior academic body would normally be specified.

A limited company is required by law to appoint at least one director who is a 'natural' person – as distinct from a legally constituted or artificial person such as another limited company.<sup>31</sup> The practice of many limited companies is to have small boards, often with no more than two or three directors, in which one or all of the directors may also be employees of the company and/or shareholders. Where a limited company's business is the provision of higher education it is difficult to see how such an arrangement can fulfil the

governance and oversight duties of a higher education provider, enabling it to show that it 'is governed and managed effectively, with clear and appropriate lines of accountability for its academic responsibilities'.<sup>32</sup> To demonstrate such clear lines of accountability, limited company higher education providers may need to enlarge their board of directors by appointing staff and student representatives and several external independent non-executive directors (NEDs) who can, together, help the board to hold the management of the provider to account and check on the effectiveness of its academic governance.

A key aim of current FSMG checks is to establish that 'a clear relationship exists between [the provider's] financial policy and the safeguarding of the quality and standards of its provision'.<sup>33</sup> Limited companies that are owned by another company and/or are part of group of companies may appoint representatives of those other companies to their boards as directors. In which case, they should be aware that current FSMG reporting requirements pay close attention to the ultimate ownership of a provider when testing the clarity and accuracy of its descriptions of its governance and accountability arrangements to the regulator.

### **The business of academic governance**

According to the CUC Code, HEFCE's ROM and associated documents,<sup>34</sup> the business of academic governance is likely to include supervising providers' arrangements for setting academic policies, strategies<sup>35</sup> and procedures<sup>36</sup> including for the following:

- the ethical conduct and academic integrity of students and staff
- setting and upholding academic standards
- the content of the curriculum and the approval of new programmes<sup>37</sup>
- the award of qualifications (and educational credit)
- the appointment of internal and external examiners
- assessment and examinations
- the admission of students
- student discipline
- complaints and appeals by students

### **Reviewing the effectiveness of academic governance**

Universities and other awarding bodies that have adopted the CUC Code are enjoined to have the effectiveness of their academic governance tested at regular intervals.<sup>38</sup> Likewise, HEFCE has stated that its revamped five-yearly Assurance Review will test how governing bodies have assured themselves that academic governance is effective. This raises questions about the criteria against which to judge the effectiveness of academic

governance, whether by governing bodies working to meet the CUC Code, their agents, or HEFCE.

### **Criteria for assessing the effectiveness of academic governance: structures**

As noted earlier, in January 2017 the CUC suggested that governing bodies should assess the effectiveness of their academic governance with reference to the fitness for purpose of committee structures and machinery.<sup>39</sup> This approach is adaptable to the circumstances of individual providers, enabling governing bodies to recognise whether the academic governance structures that have been adopted are internally coherent and able to perform effectively. But governing bodies also need to be assured that the way in which their providers conduct their academic governance enables them to make decisions and offer recommendations fairly and lawfully, in ways that will withstand external scrutiny including, if necessary, through the courts.

### **Effectiveness in the conduct of academic governance**

#### ***Collegiality***

Both the CUC Code and its IPN 3 state that the ‘underlying principles of sound academic governance are based upon collegiality’.<sup>40</sup> The term ‘collegiality’ is widely used across English-speaking higher education but, as others have found, its precise meaning is hard to pin down,<sup>41</sup> which suggests that providers’ governing bodies and their senior academic bodies may find it helpful to identify, agree and record their own definitions of the term to use in their own documents and discussions.

For the purposes of this Discussion Note, we have defined the term ‘collegiality’ as:

‘the acceptance by members of an academic community<sup>42</sup> that they are responsible to each other for the integrity of the academic standards used, the curriculum, the academic experience of students and their outcomes, and for conducting themselves in academic governance with respect for the lawful opinions of others and their rights to express them.’<sup>43</sup>

From here we can begin to identify the ‘sound principles of academic governance’ that are based on collegiality and which, reciprocally, make it possible.

#### ***Sound principles of academic governance<sup>44</sup>***

We propose, with the CUC, that the principles of sound academic governance are based on collegiality; that sound academic governance operates within the law and the framework created by the provider’s own charter, articles, statutes and formal resolutions; that it respects academic freedom and freedom of expression; and, that it is

- Ethical and fair
- Collegial and expert
- Transparent and open
- Diverse
- Evidence-based
- Responsive to students and stakeholders
- Reflective and self-scrutinising

We further propose that, to operate in conformity with these principles, providers will find it worthwhile to consider the 10 Elements of sound academic governance that are offered in the second part of this Discussion Note.

## PART II

### ELEMENTS OF SOUND ACADEMIC GOVERNANCE

Part II of this Discussion Note offers 10 Elements of sound academic governance for consideration by higher education providers, recognising that sound and effective academic governance requires the collegial participation of academic staff at all levels, together with that of their students and their colleagues in learning support and administration.

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**1. *Academic governance is a collegial endeavour in which academic and learning support staff and students participate collaboratively and constructively***

Explanation

*The Higher Education Code of Governance* (the CUC Code) states that ‘the underlying principles of sound academic governance are based on ‘collegiality’ which can be defined as:

‘the acceptance by members of an academic community based in a higher education provider, that they are responsible to each other for the integrity of the academic standards used by the provider, its curriculum, the academic experience of its students and their outcomes’.

For collegiality to thrive in an academic community it is necessary for providers to define what collegiality means for them within their own context. This may involve adopting and putting into practice principles of academic governance such as those outlined in Part I of this note (p.8) and below.

**2. *Governing bodies ensure that a higher education provider has a senior academic body at the apex of its structure for academic governance and that it has the support, resources, expertise and competence to discharge its responsibilities.***

Explanation

The CUC Code states that good governance in higher education requires governing bodies to commit themselves to ‘academic freedom and high quality research, scholarship and teaching’, among other values, and to ‘work with the Senate/Academic Board or equivalent’ in order to assure themselves that ‘academic governance is effective’.<sup>45</sup> This presupposes that each provider has academic governance arrangements capped by a senior academic body with which the governing body and the provider’s executive can work to uphold

collegiality, academic freedom, freedom of expression, and ethical behaviour on the part of all staff and students and in the work of the provider.

Where a provider does not have a senior academic body, the governing body ensures that one is established with which both it and the provider's executive will work to safeguard students' academic experiences and outcomes. Having satisfied itself that the provider has established a senior academic body that is appropriate to its circumstances, the governing body ensures that its constitution complies with the law, and particularly the Equality Act (2010) and other applicable legislation and regulations, and that its procedures enable it to make robust and fair decisions<sup>46</sup> and advise the governing body and executive on matters within its remit.

Operating sound, ethical and fair arrangements for academic governance that meet the responsibilities laid on higher education providers by statute and their own charters and articles, is demanding for participants and those who support and advise them. Governing bodies ensure that those who participate in academic governance are competent and have the necessary expertise. Participants are selected (or elected) and then appointed through fair, open and non-discriminatory procedures. Those who participate in academic governance are appropriately inducted into their roles and properly briefed, trained and supported.

Academic governance in higher education deals with complex and demanding matters that require informed judgements. In order that decisions and recommendations by senior academic bodies are based on the best available information and data, governing bodies ensure that sufficient secretariat and technical support services for them are in place. Staff supporting academic governance themselves receive appropriate training and support so that arrangements run smoothly.

**3. *Academic governance and the provider's senior academic body are subject to the ultimate authority of its governing body and operate within the terms set out in the provider's charter, statutes or articles and memorandum and the law.***

Explanation

Each provider operates within a formal framework that is set out in its governing instruments or articles, subsequent updates, statute law and common law.<sup>47</sup> Typically, these define how the governing body is responsible for the character and ethos of its provider; the provider's overall performance and its operation under the law. Also, the governing body oversees the work of the institution's executive and its senior academic body, with the latter heading up the provider's academic governance arrangements.

The provider's governing instruments may also state the conditions that must be observed if its governing body or executive are to set aside academic decisions and recommendations made by the senior academic body. Where this is not the case, the governing body should itself make it clear that it will only set aside decisions and recommendations made by the senior academic body in exceptional circumstances, that in all such cases it will publish a full justification for so doing, and that it will expect that the executive does likewise under similar circumstances.

**4. *Providers ensure the involvement of students in their academic governance.***

Explanation

Governing bodies, senior academic bodies and executives recognise the special position occupied by students as stakeholders in that they are co-producers of their own learning and consumers of the higher education and other services the provider makes available to them. Governing bodies also recognise that student participation in academic governance offers valuable opportunities to learn about ethical and responsible governance, to be active in shaping their own academic experience and learning, and to help the provider to enhance the academic experience it provides.

Senior academic bodies monitor what constitutes good practice in student representation and participation in academic governance in other providers and jurisdictions. They work with students' representatives, executives and governing bodies to ensure opportunities for student participation in the academic governance of the provider that correspond to accepted good practice and to the legal status of students. When assuring themselves of the overall effectiveness of the provider's academic governance, governing bodies give careful attention to student participation.

**5. *Academic governance is conducted openly, ethically, and transparently. It follows fair and lawful rules and procedures for making, recording and publishing decisions about academic matters and disclosures of conflicts of interest.***

Explanation

Collegiality in academic governance requires that there are fair and open opportunities for academic staff and other educational professionals to contribute to forming and agreeing the provider's academic policies, strategies, and practices through structures appropriate to the provider's size and status. Ethically informed decisions, within their authority, are made by academic staff, education professionals and, where appropriate, students in formally constituted meetings.<sup>48</sup>

This requires higher education providers to agree structures, policies and procedures for the exercise of academic governance. It also requires:

- that providers' executives, senior academic bodies and governing bodies work together to identify the scope of academic governance appropriate to their context and circumstances and the conditions under which academic decisions made by the senior academic body may be justifiably overruled by the governing body;
- that decisions in academic governance that require the exercise of academic judgement are made fairly, by properly appointed individuals with the expertise and experience to make them;
- the provision of relevant and timely information and data to those involved in academic governance to inform their deliberations, decisions and recommendations;
- the proceedings of academic governance to be recorded and disseminated in such a way that decisions are made known to those who need to follow them and so that non-participants and lay members of the governing body can understand that decisions were fairly reached.<sup>49</sup>

Openness, transparency and fairness in the decisions and recommendations of academic governance are indispensable in demonstrating probity and adherence to ethical standards and equality. The presence of qualified external academic peers at all levels supports commitment to these essential qualities. This may be through the participation of external examiners in assessments and of qualified independent external peers in:

- appointment promotion and disciplinary committees for academic staff;
- validation and review panels;
- meetings of the institution's senior academic body and/or its sub-committees.

For academic governance decisions where there is (or is perceived to be) the risk of financial or other pressures being brought to bear, vigilance is required to ensure that potential conflicts of interest are identified. In such circumstances the participation in meetings of suitably qualified external peers may assist in ensuring transparency and probity.<sup>50</sup>

**6. *Sound academic governance in higher education requires that academic staff enjoy freedom under the law to teach and research in their subject and professional domains and that providers safeguard freedom of expression under the law, where relevant, for academic staff and students.***

Explanation

The CUC Code encourages governing bodies to recognise that, for academic governance to be effective, academic staff must be free to exercise their academic judgement (subject to the law) free of censure or detriment.<sup>51</sup> More generally, academic governance also requires that freedom of expression under the law is guaranteed for academic staff and students.

In higher education, the provider's governing body is the guardian and guarantor of academic freedom and freedom of expression for staff and students. It is therefore necessary that, working with the executive and the senior academic body, it subscribes to a clear statement defining and upholding academic freedom and lawful freedom of expression. Such a statement should also commit the provider to ensure ethical conduct on the part of all staff and students. The governing body ensures that staff subscribe to the statement as a condition of their employment, and that subscribing to the statement is a condition of a student's registration to study with the provider.

**7. *Decisions that require the exercise of academic judgement are made by staff who are qualified to make such judgements.***

Explanation

Operational decisions and/or recommendations that require the exercise of academic judgement are ideally made close to where teaching is provided, research enabled and learning takes place. This may be in a subject team, a department or unit, a programme team, school or faculty, depending on how the provider is organised.

Where decisions require the exercise of academic judgement (including decisions and/or recommendations about students' academic achievements, or the appointment, promotion and dismissal of academic staff on academic grounds) the provider's regulations and procedures ensure that requirements are set out for decisions to be made ethically by persons with the necessary expertise. They are made in a proper, orderly, fair and reasonable manner and are recorded, together with any dissenting opinions. Processes for appealing against such decisions where they may have been reached unfairly are made available.

- 8. Authority to make decisions on its behalf that the senior academic body of a provider delegates to a subordinate academic body or individual is formally recorded in its papers and notified to the governing body and executive, together with the conditions of the delegation, including whether further delegation requires express authorisation.**

Explanation

In academic governance when a body delegates some part of its authority for making academic decisions, the nature of the delegation, and the conditions that attach to it, are formally recorded. Such a record includes whether the authority may be further delegated and whether prior authorisation is required for such sub-delegation from the senior academic body. This will normally form part of a provider's scheme of delegation that is kept up-to-date by the provider and widely published.

The provider's senior academic body remains responsible for decisions made under its delegation and is accountable for them to its governing body. It periodically reviews how its delegated authority has been used in academic governance matters (including when working with other providers and awarding bodies to deliver higher education) and reports on this to the executive and governing body.

- 9. The matters in the provider that are subject to (and subjects of) academic governance are agreed between the governing body, the executive and the senior academic body; they are formally published in the papers of the governing body and the senior academic body.**

Explanation

In the governance of higher education providers governing bodies, executives and senior academic bodies agree on the matters<sup>52</sup> they normally expect to be dealt with through academic governance arrangements and publish this information for the benefit of staff, students and others. This helps executives and governing bodies to be clear when they need to publish the grounds for not following the advice or recommendations of the senior academic body.

- 10. All aspects of academic governance in higher education providers are periodically reviewed by providers and their governing bodies.**

Explanation

The circumstances in which governance and the academic governance of providers operate are subject to change. To ensure that its academic governance overall is aligned with generally accepted good practice, and is fit for purpose, the provider and the governing body periodically review:

- the conduct and effectiveness of all its academic governance arrangements;
- the effectiveness and conduct of relations between the senior academic body, its supporting committees and bodies to which it has delegated matters;
- relations of the senior academic body with the executive and the governing body.

The governing body ensures that it receives and discusses the reports from such periodic reviews, that they are also considered by the senior academic body and the executive and used to enhance the provider's academic governance.

## ELEMENTS OF SOUND ACADEMIC GOVERNANCE (SUMMARY)

1.	<i>Academic governance is a collegial endeavour in which academic and learning support staff and students participate collaboratively and constructively.</i>
2.	<i>Governing bodies ensure that a higher education provider has a senior academic body at the apex of its structure for academic governance and that it has the support, resources, expertise and competence to discharge its responsibilities.</i>
3.	<i>Academic governance and the provider's senior academic body are subject to the ultimate authority of its governing body and operate within the terms set out in the provider's charter, statutes or articles and memorandum and the law.</i>
4.	<i>Providers ensure the involvement of students in their academic governance.</i>
5.	<i>Academic governance is conducted openly, ethically, and transparently. It follows fair and lawful rules and procedures for making, recording and publishing decisions about academic matters and disclosures of conflicts of interest.</i>
6.	<i>Sound academic governance in higher education requires that academic staff enjoy freedom under the law to teach and research in their subject and professional domains and that providers safeguard freedom of expression under the law, where relevant, for academic staff and students.</i>
7.	<i>Decisions that require the exercise of academic judgement are made by staff who are qualified to make such judgements.</i>
8.	<i>Authority to make decisions on its behalf that the senior academic body of a provider delegates to a subordinate academic body or individual is formally recorded in its papers and notified to the governing body and executive, together with the conditions of the delegation, including whether further delegation requires express authorisation.</i>
9.	<i>The matters in the provider that are subject to (and subjects of) academic governance are agreed between the governing body, the executive and the senior academic body; they are formally published in the papers of the governing body and the senior academic body.</i>
10.	<i>All aspects of academic governance in higher education providers are periodically reviewed by providers and their governing bodies.</i>

## NOTES

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- <sup>1</sup> Michael Shattock, *Managing Good Governance in Higher Education*, Open University Press, 2006 (Shattock).
  - <sup>2</sup> Dennis Farrington and David Palfreyman, *The Law of Higher Education*, Second Edition, Oxford University Press, 2012, (Farrington and Palfreyman).
  - <sup>3</sup> On the design of academic governance arrangements see Shattock, Chapter 5, and Farrington and Palfreyman, Chapters 5-8.
  - <sup>4</sup> *Revised operating model for quality assessment*, HEFCE, March 2016/03, (the ROM) [http://www.hefce.ac.uk/media/HEFCE,2014/Content/Pubs/2016/201603/HEFCE2016\\_03.pdf](http://www.hefce.ac.uk/media/HEFCE,2014/Content/Pubs/2016/201603/HEFCE2016_03.pdf)
  - <sup>5</sup> HEFCE has defined the quality of education in terms of the academic experience enjoyed by students. The ROM aligns itself with the current version of the *Standards and Guidelines for Quality Assurance in the European Higher Education Area* (ESG) which defines quality as the result 'of the interaction between teachers, students and the institutional learning environment' and the purpose of quality assurance as 'to ensure a learning environment in which the content of programmes, learning opportunities and facilities are *fit for purpose*'. ESG (2015), p.5 [our emphasis]. <http://www.enga.eu/index.php/home/esg/>. In the ROM, HEFCE explicitly rejects a 'compliance-focused approach' to quality assessment. See ROM, paragraph 41.
  - <sup>6</sup> In this Note the term 'standard' refers to a statement or other point of reference used to measure attainment. When we use the terms 'academic standard' or 'educational standard' we mean the statement of its requirements that an examining or awarding body uses to determine whether to recognize achievements, including for the grant of an educational award or credit. This definition is broadly in line with that set out in the Quality Code, Section A, p.5
  - <sup>7</sup> *The Higher Education Code of Governance*, Committee of University Chairs, December 2014, (the CUC Code), Element 4.2, p.20. <http://www.universitychairs.ac.uk/wp-content/uploads/2015/02/Code-Final.pdf>. The national minimum expectations for the UK are set out in Part A of the Quality Code.
  - <sup>8</sup> See *Quality Review Visit Handbook*, QAA, 2016, (Quality Review Visit Handbook) pages 2, 4, 5 and 27. <http://www.qaa.ac.uk/en/Publications/Documents/Quality-Review-Visit-Handbook-2016.pdf>
  - <sup>9</sup> CUC Code, Element 4.2, p.20
  - <sup>10</sup> *Illustrative Practice Note 3: Academic Governance*, CUC, January 2017, (IPN 3), <http://www.universitychairs.ac.uk/wp-content/uploads/2017/01/CUC-IPN3-Academic-Governance-Jan-17.pdf>.
  - <sup>11</sup> IPN 3, paragraph 2
  - <sup>12</sup> IPN 3, paragraph 14 and footnote 3, which refers to HEFCE Circular Letter 25/2016 'Assurance statements from governing bodies as part of the new operating model for quality assessment', 22 August 2016 <http://www.hefce.ac.uk/media/HEFCE,2014/Content/Pubs/2016/CL,252016/Print-friendly%20version.pdf>
  - <sup>13</sup> IPN 3, paragraph 10. On delegation in academic governance, see also Shattock, Chapter 5 p. 65 and 67 (standing committees) and 78-79.
  - <sup>14</sup> *Quality Review Visit Handbook*, p.5
  - <sup>15</sup> *Code of Good Governance for English Colleges*, Association of Colleges Governors' Council (AoC Code), March 2015, <https://www.aoc.co.uk/funding-and-corporate-services/governance/governance-resources/code-good-governance-english-colleges>
  - <sup>16</sup> AoC Code, paragraphs 1.8, p.6; 2.8, p.7; 3.3, p.8 and 9.17, p.16.
  - <sup>17</sup> AoC Code, Section 4. 'Teaching and Learning' paragraph 4.1, p.9
  - <sup>18</sup> 'Foundation Degree Awarding Powers. Guidance for Further Education Institutions in England: Criteria and Process for applying for Foundation Degree Awarding Powers',

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- (FDAP Guidance), BIS, October 2015, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/526812/BIS-15-532-foundation-degree-awarding-powers-october-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526812/BIS-15-532-foundation-degree-awarding-powers-october-2015.pdf)
- 19 QAA FDAP Guidance, p.9.
- 20 Quality Code, 'Academic governance arrangements', Part A, Expectation A2.1, p.18.
- 21 See the Companies Act (2006), <http://www.legislation.gov.uk/ukpga/2006/46/contents>, especially Parts 10 (Directors) and 13 (Resolutions and Meetings)
- 22 Charities Act 2011. Universities and colleges that are registered charities are regulated as 'exempt' charities by HEFCE which is the designated 'principal regulator', on behalf of the Charities Commission but members of their governing bodies, as trustees, are subject to the same duties as trustees of non-exempt charities. [http://www.legislation.gov.uk/ukpga/2011/25/pdfs/ukpga\\_20110025\\_en.pdf](http://www.legislation.gov.uk/ukpga/2011/25/pdfs/ukpga_20110025_en.pdf); Charities Act, Parts 9 and 10; Charities Commission ' <https://www.gov.uk/guidance/trustee-board-people-and-skills>
- 23 For example, the Equality Act (2010).
- 24 'UK higher education providers – advice on consumer protection law. Helping you comply with your obligations' Competition and Markets Authority, March 2015, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/428549/HE\\_providers\\_-\\_advice\\_on\\_consumer\\_protection\\_law.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/428549/HE_providers_-_advice_on_consumer_protection_law.pdf)
- 25 *The UK Corporate Governance Code*, April 2016, <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>, especially p.4 ('Comply or explain') and p.5 ('Principles'). See also the AAA discussion note on 'Academic Governance for independent higher education providers' which can be found at <http://www.academicaudit.net/academic-governance-for-independent-providers.html>, and 'Corporate Governance Code', Financial Reporting Council, April 2016, <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>
- 26 *Quality Review Visit Handbook*, p.5.
- 27 CUC Code, Element 7.1, p.25.
- 28 CUC Code, Element 7.1, p.25.
- 29 Where awarding bodies adopt a compliance-driven approach to working with alternative providers this can result in the alternative providers being required to operate academic governance arrangements that are onerous and inappropriate to their circumstances, and to the staff of the alternative provider viewing academic governance as an external imposition requiring compliance rather than engagement.
- 30 Companies Act (2006) Chapter 2, s.172 (1) (a)-(f); for reputation see 1 (e).
- 31 Companies Act (2006), Section 10, paragraph 154 (1).
- 32 'Financial sustainability, management and governance. Checks for new applicants for educational oversight: information for applicants' (FSMG 2015), p.7, <http://www.qaa.ac.uk/en/ReviewsAndReports/Documents/FSMG-guidance-for-providers-2015.docx>.
- 33 FSMG 2015, p.7.
- 34 See the 'Invitation to Tender' issued by HEFCE with the ROM, 'Procurement of Quality Assessment Services Schedule 3 Specification and Technical Requirements, Lot 2, Verification p.9'; the CUC IPN 3, paragraph 10; HEFCE Circular Letter 25/2016
- 35 CUC Code Element 4, p.21.
- 36 For example for delegation and the performance of due diligence checks when dealing with third parties. CUC Code Element 4, p.21 and IPN 3, paragraph 10. For a more wide-ranging discussion of the issues raised by delegation and devolution of decision making for academic governance see Shattock, where as themes they run throughout Chapter 5.
- 37 In UK higher education the technical term that individual providers use to refer to the curriculum that a student follows to gain an academic award or educational credit may vary: some may refer to it as a 'programme' or 'programme of study' others may call it a

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- 'course'. Care is necessary because in some providers a 'course' may be a sub-unit of a 'programme'.
- <sup>38</sup> CUC Code, Element 4, p.21
- <sup>39</sup> IPN 3, paragraphs 9-13.
- <sup>40</sup> CUC Code Element 4.2, p.20; IPN 3 paragraph 2.
- <sup>41</sup> See the *American Association of University Professors. Policy Documents and Reports*, Eleventh Edition (the 'Red Book'), p. 20 and p.440. The term 'collegial' is held to have originated in classical Rome to describe a system for dividing and sharing responsibilities and executive authority. 'Collegiality' has been used in the Roman Catholic Church to denote the sharing of authority between the Pope and the Bishops, particularly after the Second Vatican Council. The concept of 'shared governance' is widely used in North America to describe the participation of stakeholders in various processes where academics (faculty) while acknowledging the ultimate authority of the governing board 'exercise primary responsibility for the curriculum'. Like the concept of 'collegiality', that of 'shared governance' also seems to lack a generally agreed definition. For 'shared governance see the Red Book, p.20 and passim.. See also 'Exactly what is 'Shared Governance?' *The Chronicle of Higher Education*, July 23 2009, <http://www.chronicle.com/article/Exactly-What-Is-Shared/47065/>
- <sup>42</sup> We use the term 'academic community' to encompass students and all those working with the academic staff of a provider to support learning, teaching, scholarship and research.
- <sup>43</sup> In drawing up this working definition we have drawn heavily on Farrington and Palfreyman and Tapper and Palfreyman and consulted the Red Book.
- <sup>44</sup> The Red Book appears to be the most commonly cited source among third parties for the phrase 'principles of academic governance'.
- <sup>45</sup> CUC Code, Element 4, pp.18-19, p.18.
- <sup>46</sup> The governing body may also direct or otherwise empower the senior academic body to establish committees and sub-committees and task-and-finish groups where appropriate to the provider's circumstances.
- <sup>47</sup> Farrington and Palfreyman, Chapter 5.01-5.02, pp.123-124.
- <sup>48</sup> The Red Book uses the term 'due process' to refer to what in the UK is sometimes referred to as 'natural justice' or 'fairness' to all those involved, including in academic matters. See Farrington and Palfreyman, Chapter 8, paragraph 8.14, p.205 and Chapter 12, paragraph 12.48, pp.368-371.
- <sup>49</sup> Farrington and Palfreyman, Chapter 8, pp.205-6.
- <sup>50</sup> Shattock, p.118.
- <sup>51</sup> 'The most traditional and persuasive justification for academic freedom is that our best approximations of truth emerge only from the continuous and free exchange of ideas within the scholarly profession', The Red Book, n.5, p.76. In 2015, drawing on a century of development in the context of the USA, the Red Book defined the spheres in which academic freedom should be recognised as: 'freedom of research and publication; freedom in the classroom, freedom to teach, freedom of extramural utterance, freedom of intramural utterance' [that is, about matters of institutional governance]. Red Book, p.22 and at greater length in the chapters on 'Academic Freedom and Artistic Expression' (pp.103-105) and 'Academic Freedom and Electronic Communications' (pp.106-137). See also the 'UCU Statement on Academic Freedom', 27 January 2016 at <https://www.ucu.org.uk/academicfreedom>.