

## 21. Corporate ethics and values

### Introduction and aim

Corporate ethics and values underpin the manner in which a higher education (HE) provider operates. A provider risks receiving adverse publicity and incurring reputational damage if its conduct and standards do not reflect the ethics and values expected of it. Governing bodies need to ensure that the provider's reputation is not placed at risk by actions which are not aligned with acceptable ethics and values.

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### 1. The role of ethics and values

Corporate ethics and values influence and inform the behaviours of employees and the manner in which the organisation conducts its business. The elements describe the conduct and standards expected of the organisation, and strongly influence its corporate culture.

### 2. Boards in the private sector

Boards in the private sector are being encouraged to give greater attention to ensuring that the way a company conducts itself in its operations and relations with its stakeholders is appropriate<sup>1</sup>. Guidance on the effectiveness of company boards states: "an effective board defines the company's purpose and then sets a strategy to deliver it, underpinned by the values and behaviours that shape its culture and the way it conducts its business"<sup>2</sup>.

### 3. Role of governing bodies

The [Scottish Code of Good HE Governance](#) states that 'governing bodies have a responsibility to lead by example, guiding the development of the institution's ethics and values and demonstrating these in the governing body's own actions. This means that they must show leadership and integrity not only in the decisions they make but also in the way they conduct their business'<sup>3</sup>.



## 4. Shared values

The [Higher Education Code of Governance](#) notes 'high-quality HE which commands public confidence and protects the reputation of the UK rests on a number of shared values'<sup>4</sup>. Failure to adhere to these values risk undermining the collective reputation of all providers in the UK. The Code expects governing bodies to commit to the following shared values:

- Autonomy as the best guarantee of quality and international reputation.
- Academic freedom and high-quality research, scholarship and teaching.
- Protecting the collective student interest through good governance.
- The publication of accurate and transparent information that is publicly accessible
- A recognition that accountably for funding derived directly from stakeholders requires higher education institutions to be clear that they are in a contract with stakeholders who pay for their services and expect clarity about what is received.
- The achievement of equality of opportunity and diversity throughout the institution.
- The principle that higher education should be available to all those who are able to benefit from it.
- Full and transparent accountability for public funding.

## 5. Academic freedom

A distinguishing feature of higher education provider, and a core value, is the right for academic members of staff to exercise freedom of speech and expression. This includes the right to offer alternative opinions and perspectives, and to pursue research unhindered by external pressures. Legislation and codes of governance recognise and seek to protect academic freedom. For example, 'the governing body must understand and respect the principle of academic freedom, the ability within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges, and its responsibility to maintain and protect it as enshrined in freedom of speech legislation'<sup>5</sup>.

## 6. Public interest

In addition to shared values, the majority of higher education providers have an ethos and set of values based on operating for public benefit. This is reinforced by government, who in exchange for providing public funding, expect certain standards of behaviour from each provider. 'Public' higher education providers are expected to conduct their 'business will due respect for the public interest'<sup>6</sup>. As a result, the corporate ethos and values by which providers are judged are typically those that apply to the public sector.

## 7. Freedom of information

The introduction of legislation on freedom of information (FOI) was aimed at achieving greater public disclosure. The legislation confers a general right of access to information held by a 'public authority.' Most higher education providers are covered by the FOI legislation. Individuals seeking information held by a provider covered by the FOI legislation are entitled to find out whether the information exists (the duty to confirm or deny) and to receive the information (the 'right to access') except where an exemption applies. Save for cases of 'absolute exemptions' (e.g. typically, personal information), for all other possible exemptions the provider is required to judge whether the public interest in disclosure outweighs the public interest in denying access.

## 8. Responding to FOI requests

Once a request for information has been received in the required form, together with any required fee payment, the provider is expected to respond promptly to the request. Higher education providers need to exercise care in ensuring that they satisfy the procedural requirements attaching to FOI, and, in particular, meet the expected timelines when responding to a FOI request'<sup>7</sup>.

## 9. Publication scheme

Every higher education provider subject to the FOI legislation is expected to adopt and maintain a publication scheme. The scheme needs to be approved by the relevant [Information Commissioner \(IC\)](#). The IC provides [guidance to HEIs](#) as to the contents of a publication scheme. The governing body should periodically seek assurances that the provider's information publication scheme is up-to-date and remains compliant with the requirements of the information commissioner.



## 10. Use of FOI legislation

To gain information about a higher education provider, FOI legislation is used by a variety of interested parties, including journalists and trade unions.

## 11. Whistleblowing

To enable inappropriate actions to be exposed, higher education providers are expected to have a whistleblowing policy. Whistleblowing describes a situation where, for example, an employee of the higher education provider suspects wrong-doing is taking place, which is against the public interest. As an employee the potential whistleblower may have access to confidential information, which highlights procedural failures or inappropriate practice. A whistleblowing policy is designed to encourage such individuals to report the information, while protecting the position of the whistleblower.

## 12. Governing bodies and whistleblowing

Governing bodies are expected to approve the provider's whistleblowing policy and may seek assurances as to its effectiveness. This may take the form of an annual report to the audit committee, allowing the committee to review and monitor the implementation of the policy.

## 13. Public disclosure

In line with the public interest, the expectation is that the governance of 'public' higher education providers is conducted with a high degree of openness and transparency and there is significant public disclosure. The disclosure of information enables others to scrutinise the work of the provider and its governance.

## 14. The Court or General Assembly

An element of scrutiny may also be exercised by a provider's Court, General Assembly or similarly titled body<sup>8</sup>. Separate from the governing body, many, but not all, higher education providers have such a body. Typically, comprising of representatives drawn from a wide range of stakeholders, Courts are largely ceremonial and advisory bodies, but may retain the power to make representations to the governing body. On a few occasions this has led to a Court raising matters of significant concern with the governing body<sup>9</sup>.

## 15. The function of the Court or General Assembly

The Court or General Assembly provides a means by which the 'University presents its achievements to its broader constituencies and receives feedback and advice on matters relating to University business'<sup>10</sup>. Normally, the body will meet annually, and receive reports from the principal officers (e.g. head of institution, Treasurer or Director of Finance) on the work of the university and its accounts for the previous year. The meeting provides an opportunity to raise questions about the provider's stewardship<sup>11</sup>.

## 16. Disclosure of information relating to governance

Providers are expected to make information on how they are governed publicly available. The Scottish Code of Good HE Governance states 'institutions are expected to make available on their website a list of all members of the governing body, along with a brief biography of each member, and an email address for contacting the Secretary, which may also be used to contact members of the governing body. Details of the membership and terms of reference of key committees, including the audit, remuneration and nominations committees (or equivalents) should also be listed'<sup>12</sup>. As an ongoing condition of registration, the Office for Students (OfS) requires English providers as a minimum to 'make publicly available the minutes of the meetings of its governing body and committees, except where such material is genuinely confidential'<sup>13</sup>.

## 17. Information disclosed on a provider's website

A provider's website will normally act as the repository of information about the provider's governance. Typically, the information available includes the provider's constitutional instruments, categories of membership, the terms of reference for the governing body and its committees, and names and brief biographical details of the members of the governing body. The information may also include minutes of the governing body's meetings and those of its committees, although the versions publicly available may have sections redacted to avoid disclosing confidential information.



## 18. Reputation risks arising from bequests and gifts

An area which is in the public eye is the bequests and gifts given to a provider. Disclosure that a provider has accepted a bequest or gift judged by others to be inappropriate is likely to result in significant reputational damage. Consequently, large bequests or gifts offered from high-wealth individuals or organisations need to be assessed with care before being accepted by the provider.

## 19. Undertaking due diligence

Before agreeing to accept the offer of a substantial bequest or gift the provider will need to undertake due diligence. This should consider, for example, the source of bequest or gift, how the bequest or gift was amassed and whether conditions are attached to the offer. If the bequest is judged to have been accumulated by unethical means, or if the potential donor is seeking to attach unacceptable conditions to how the funds are be used, the provider be placing itself in difficulty should it decide to accept the bequest or gift being offered<sup>14</sup>.

## 20. Seeking assurance

The governing body should seek assurances from senior management that appropriate policies and procedures have been developed to consider and assess any large bequests and gifts being offered to the provider. The policies and procedures should be regularly reviewed, and the governing body should receive notification of any proposed large donation. The provider's Audit committee will normally discharge these responsibilities on behalf of the governing body.

## 21. Conclusions

Although the majority of higher education providers are not strictly part of the public sector, their ethos, values and actions are expected to reflect the public interest. Typically, external parties will judge the provider's actions as though they are part of the public sector. Providers run the risk of reputational damage should their behavior and actions be judged to have fallen short of the standards expected of public sector organisations.

## 22. Questions to review

- Q Do members of the governing body clearly understand and share the provider's ethos and values ?
- Q Does the provider have a Court? If so, is it proactively used to engage with the provider's wider community?
- Q Does the governing body or one of its committee regularly review the provider's policies on FOI and whistleblowing?
- Q What information about the provider's governance and its members are disclosed on the its website?
- Q Are the minutes of the meetings of governing body and its committee meetings made publicly available?
- Q Does the provider have a clear policy on accepting large bequests and gifts? Is the operation of the policy regularly monitored by the governing body or one of its committees?



## End notes

- <sup>1</sup> The growing emphasis on the importance of culture reflects acknowledgement that there have been examples of organisations who have operated with inappropriate ethics and values, and that these have damaged the reputation not only of the individual business, but the public view of businesses more generally. For discussion on the role of culture, see Financial Reporting Council, [Corporate Culture and Role of Boards](#), July 2016.
- <sup>2</sup> Financial Reporting Council (2018), [Guidance on Board Effectiveness](#), p.3.
- <sup>3</sup> The Scottish Code of Good HE Governance (2017), p.3.
- <sup>4</sup> Committee of University Chairs (2018), The Higher Education Code of Governance, June Section 1, p.8.
- <sup>5</sup> Committee of University Chairs (2018), Op.Cit., para. 4.3., p.20.
- <sup>6</sup> Committee of University Chairs (2018), Ibid., p.6
- <sup>7</sup> The impact of FOI legislation on higher education is discussed in Farrington D J and Palfreyman (2012), The Law of Higher Education, 2nd Edition, Oxford University Press, pp.514-520.
- <sup>8</sup> The term Court can be used in a number of ways. In Scotland term it is normally used to describe the governing body, whereas in England the title Council is commonly used.
- <sup>9</sup> A recent example is detailed in [The Halpin Review: A Review of the Effectiveness of the Council at the University of Bath](#), May 2018, pp.70-72.
- <sup>10</sup> The University of Manchester, [The General Assembly](#).
- <sup>11</sup> Farrington D J and Palfreyman D, (2012), Op.Cit., p.149.
- <sup>12</sup> Scottish Code of Good HE Governance (2017), para. 46, p.17.
- <sup>13</sup> Office for Students, para.446, p118.
- <sup>14</sup> In 2010, The London School of Economics (LSE) found itself in some difficulty as a result of accepting a significant financial donation from a foreign head of state, whose son had completed a doctorate with the provider. Accepting the donation exposed weaknesses in the provider's policies and practices. The resulting adverse publicity led to the resignation of the head of the institution. Subsequently, the provider established the [Woolf inquiry](#) to identify the lessons learned.

