

21. Personal ethics and values

Introduction and aim

When performing their duties as a Governor, members of a governing body need to be mindful of the standards of behaviour expected of them. For members of 'public' providers the Nolan Principles offer clear guidance on the standards of behaviour that individuals are expected to demonstrate. Additionally, as many providers are a charity, members need to consider their responsibilities as a charitable trustee. As external factors make discharging the responsibilities of a Governor more demanding, the question of whether to remunerate Governors is receiving attention.

Topics covered

1. Ethics and values
2. Are HE providers public bodies?
3. Standards in public life
4. Nine Principles of Public Life in Scotland
5. New members
6. HE codes of governance
7. Collective responsibility and authority
8. Trustees
9. Impartiality
10. Conflicts of interest
11. Conflicts of loyalty
12. Preventing conflicts of interest and loyalty
13. Declaring conflicts of interest and loyalty
14. Register of interests
15. Register of interests in Scotland
16. Paying trustees for supplying goods and services
17. Private and public benefit
18. The reasons for considering whether to remunerate governors
19. The current position outside Scotland
20. Code of governance and remuneration
21. Remuneration of Chairs in Scotland
22. Conclusion
23. Questions to review

1. Ethics and values

Ethics is defined as the 'moral principles' and 'rules of conduct', and 'values' as an individual's 'principles and standards'¹. Collectively the two terms describe the behaviours expected of the governing body of a higher education (HE) provider and its individual members. This briefing note concentrates on the standards of behaviour expected of individual members of the governing body, and should be read in conjunction with briefing note (No 22), which considers corporate ethics and values.

2. Are HE providers public bodies?

Most HE providers occupy a position, which may be loosely described as public-private. Although typically constituted as a separate legal and independent entity, the origin of most HE providers can be traced to providing education to support local communities for the public good. Today, most providers are reliant on direct or indirect funding from the public purse. As a consequence, governing bodies are expected to act in many ways as though they were a public body, with individual members adhering to the standards established for those in public office.



3. Standards in public life

The Prime Minister receives advice on standards in public life from a non-departmental body, the [Committee on Standards in Public Life](#). The committee monitors and reports on the ethical standards of all public office holders. At the heart of the committee's work is the [Nolan Principles of public life](#). First set out by Lord Nolan in 1995, the seven principles apply to all holders of a public office. The principles are:

- Selflessness – holders of public office should only act in the public interest.
- Integrity – they should not act or make decisions for personal benefit.
- Objectivity – must take decisions impartially, fairly and on merit, using the best evidence without discrimination or bias.
- Accountability – are accountable for their actions and must submit themselves to scrutiny as necessary.
- Openness – should take decisions in an open and transparent manner.
- Honesty – holders of public office should be truthful.
- Leadership – leaders in public office should exhibit leadership and be willing to challenge poor behaviour if it occurs.

4. Nine Principles of Public Life in Scotland

In Scotland, two further principles of public life have been added to the Nolan Principles, to form the [Nine Principles of Public Life in Scotland](#)². The additional principles are

- Duty (public service) – uphold the law and act in the interests of the public body of which you are a member and in accordance with the core functions and duties of that body.
- Respect – fellow members of your public body, employees and members of the public when performing duties as a member of your public body.

5. New members

Governing bodies and individual members are expected to respect, and act in line with, the principles of public life. Individuals joining, or being elected to, a governing body should be made aware of the principles and confirm that they are willing to abide by them.

6. HE codes of governance

The codes of governance for HE acknowledge the application of the Nolan Principles to HE providers. [The Higher Education Code of Governance](#) stating that Governors 'must act ethically at all times in line with the accepted standards of public behaviour'³. While the [Scottish Code of Good HE Governance](#) states 'the members of a governing body, collectively and individually, must act in accordance with the Nine Principles of Public Life in Scotland'⁴.

7. Collective responsibility and authority

All members of the governing body share the same legal responsibilities and obligations and individual members (eg. staff and students) must not be routinely excluded from its discussions. Once a decision has been agreed all members of the governing body are expected to accept collective responsibility and abide by the decision.

8. Trustees

As most HE providers have charitable status, Governors are also trustees of a charity. They need to be mindful of their responsibilities as trustees when discharging their duties. For instance, the [Charity Commission](#) for England and Wales notes 'all trustees have a legal duty to act in the best interests of their charity'⁵.

9. Impartially

In line with the Nolan principles members of a governing body should not act either as a representative of a particular group or in any way which undermines their objectivity. The Higher Education Code of Governance notes that 'a member does not necessarily have a pecuniary interest merely because he/she is a member of staff or a student'⁶.

10. Conflicts of interest

In carrying out their duties Governors need to be mindful of, and seek to avoid, any potential conflicts of interest. A conflict of interest is deemed to arise if 'the trustees personal interests could, or be seen to, prevent them from making a decision in the best interests of the charity'⁷. If potential conflicts of interest do arise, Governors have a responsibility to disclose their interest at an early stage and, if necessary, abstain from any involvement in the decision-making process, including withdrawing from the meeting.



11. Conflicts of loyalty

Governors should also be aware that potential conflicts can arise where they hold multiple charitable trusteeships. The individual may not personally stand to gain, but equally their wider interest may prevent them from making a decision in the best interests of the charity. This is referred to as a 'conflict of loyalty'.

12. Preventing conflicts of interest and loyalty

Potential conflicts of interest and loyalty, should be considered by the Nominations Committee when considering the appointment of a new member to the governing body. The committee may on occasions seek assurance from a potential member that, for example, their existing responsibilities will not result in a conflict of interest or loyalty.

13. Declaring conflicts of interest and loyalty

Some governing bodies choose to have as a standing item on the agenda at the beginning for every meeting, which reminds members to consider, and declare, any possible conflicts of interest or loyalty. For the record, the Clerk or Secretary to the governing body will normally note any conflicts of interests and loyalty declared.

14. Register of interests

To assist openness and transparency, and helping to avoid conflicts of interest or loyalty, a register of interests is normally compiled. This includes details for all members of the governing body, and frequently members of the executive. Typically, the entry for each individual in the register will contain details of their business or professional interests and those of any spouse or partner, together with information on any other directorships and trusteeships they hold. The register is usually maintained by the clerk or secretary and updated, at least annually.

15. Register of interests in Scotland

The Scottish Code of Good HE Governance states the institution is expected to publish the register of interests on its website, suitably redacted to take account of data protection duties, and keep it up to date. The Secretary and any other senior officer closely associated with the work of the governing body, for example the Finance Director, must also submit details of any interests to be included in the register⁸. For the purpose of transparency the Scottish Code also requires a policy covering the registration of gifts and hospitality offered to members of the governing body in connection to their role as a Governor⁹.

16. Paying trustees for the supply of goods or services

There may be occasions when the HE provider seeks to purchase specific goods or services from a Governor, their company or a connected person. This is only allowable under charity law where the supply of services is explicitly agreed in advance of a payment being made, and it is clear that no payment for undertaking their normal duties as a trustee is being received by the Governor. The payment is also expected to be for a reasonable amount. This points emphasise that great care needs to be taken before there is any supply goods or services to the provider for which a payment is to be received. Any payments made to a Governor or connected person should be disclosed in the provider's annual report and accounts.

17. Private and public benefit

Beyond recovering reasonable out-of-pocket expenses, most Governors of 'public' HE providers are not remunerated. This reflects the principle that charities are organisations established for public benefit and being a trustee is normally a voluntary activity. Adherence to this principle avoids mixing private and public benefit. I.e. Governors give up their time for the benefit of others (public), and not for their own benefit (private). The principle is based on the idea that the individual should not be placed in a position where their private interests might conflict with the public.

18. The reasons for considering whether to remunerate Governors

The increasing scale and complexity of HE providers coupled with the growing time commitment and skills needed to successfully discharge the role of Governor, and in particular to chair the governing body, has led to discussion as to the remuneration of HE Governors. The debate has frequently involved comparisons being made with other areas of the public sector where non-executive directors are remunerated¹⁰. Equally, it has been argued that payment would enable individuals currently unable to accept the role because of the time commitment and personal financial loss from the time away from paid employment to undertake the role. For this reason, the position in Scotland (see below) differs from the position in the other nations of the UK.



19. The current position outside Scotland

Although the majority of Governors of 'public' HE providers are not remunerated in a minority of cases they are paid for their services as a trustee¹¹. The remuneration of Governors raises a number of issues. For example, the principle under charities law is that an individual 'can only be paid for serving as a trustee where this is in the interests of the charity and provides significant and clear advantages over all other options'¹². For providers in England and Wales the governing body is unable to authorise payments unless there is a suitable authority in the charity's constitutional instruments, and the payment is approved by the Charity Commission or the Courts. In the absence of such authority, payments would be deemed as unauthorised, even where they benefit the provider. They would amount to a breach of trust, for which the trustees could be collectively liable.

20. Code of governance and remuneration

Reflects many of the issues discussed above, The Higher Education Code of Governance, suggests that if the governing body decides to remunerate Governors, it will need to consider:

- Provisions of charity and employment law;
- Implications for the division of responsibilities between the governing body and the executive;
- Public service ethos which applies generally to HE Governors;
- The need to be explicit about time commitments; and
- The need to apply a formal process of appraisal to the remunerated Governor.

Where it is decided to remunerate a Governor, the payments need to be both commensurate with the duties carried out and reported in the audited financial statements'¹³.

21. Remuneration of Chairs in Scotland

The position on paying the senior lay member (Chair) of the governing body in Scotland has changed. [The Higher Education Governance \(Scotland\) Act 2016](#) included the provision that 'the governing body of a HE institution is, on the request of a person appointed to the position of senior lay member of the governing body, to pay such remuneration and allowances to the person as the governing body considers to be reasonable (which are to be commensurate with the nature and amount of the work done by the person in the capacity as senior lay member)'¹⁴. Payment is viewed as a mechanism for

broadening recruitment to the position of chair, and diluting the likelihood that such a position is most likely to be filled by an individual drawn from a relatively narrow set of occupational settings and social economic groups.

22. Conclusions

Governing bodies and Governors of 'public' HE providers should at all times be mindful of the principles of public life and seek to act accordingly. Failure to do so, brings the risk of reputational damage to the provider and the individual.

23. Questions to review

- Q Are all Governors aware of the principles of public life?
- Q Have Governors confirmed that they will abide by the principles of public life?
- Q Do members of the governing body appreciate that they bear collective responsibility for decision-making and need to act accordingly?
- Q Is there a clear understanding amongst Governors about what they should do in the event of conflicts of interest and loyalty?
- Q Does the clerk/secretary maintain a register of interests?
- Q Has the matter of Governor remuneration been explored?



End Notes

- ¹ The Oxford Encyclopedic English Dictionary.
- ² For full details see [Model Code of Conduct for Members of devolved public bodies](#), February 2014.
- ³ The Higher Education Code of Governance, Element 2.1, p.13.
- ⁴ The Scottish Code of Good HE Governance, p.8.
- ⁵ Charity Commission (2014), Conflicts of Interest, May, p.2.
- ⁶ The Higher Education Code of Governance, Element 2.2, p.13.
- ⁷ Charity Commission (2014), Op.Cit., p.3.
- ⁸ The Scottish Code of Good HE Governance, para. 30, p.13.
- ⁹ The Scottish Code of Good HE Governance, para. 31, p.13.
- ¹⁰ The payment of non-executive directors of Foundation Trusts in the health sector being one example.
- ¹¹ It is estimated that perhaps 10 higher education providers in England currently make some form of payment, to one or more members of the governing body. In most instances this is to the Chair, and in some cases the Chairs of governing body committees. For further information see [Roundtable Note 11. Higher Education Provider Trustee Remuneration](#).
- ¹² Charity Commission (2012), Trustee expenses and payments, C11, March, p. 3
- ¹³ The Higher Education Code of Governance, Element 7.7, p.26.
- ¹⁴ Chapter 1, Section 9.

