



The
University
Of
Sheffield.

The role and responsibilities of members of Council

Background

The Council is the University's governing body. Subject to the powers of Senate in relation to academic matters, it has ultimate responsibility for the affairs of the University, determining its future direction and fostering an environment in which its mission is achieved. Council's powers and functions are prescribed in the University's Statutes and supporting Regulations¹. It is the responsibility of the Council to ensure that the University continues to satisfy all of its ongoing conditions of registration with the Office for Students and the requirements of the OfS terms and conditions of funding for higher education institutions². Guidance for registered higher education providers on the general ongoing conditions of registration is set out in Part V of the OfS's regulatory framework³. The University has adopted and complies with the Committee of University Chair's (CUC) Higher Education Code of Governance⁴. These documents are the main points of reference for the following description of the role and responsibilities of Council members. Note has also been taken of the governance materials published by AdvanceHE⁵ and good practice drawn from across the sector.

1. Role and responsibilities

The main collective responsibilities of members of Council (derived from the powers and functions of Council set out in Regulation II) concern strategy, performance and accountability and can be summarised as follows:

- To promote and safeguard the interests of the University, supporting the development of its mission and strategic vision such that these meet the needs of stakeholders.
- To ensure that the University's performance against its strategic objectives is monitored and evaluated.
- To be the principal financial, business, legal and employing authority of the University and to have overall responsibility for its assets, property and estate, including ensuring value for money.
- To ensure the establishment and monitoring of systems of control and accountability including operating comprehensive corporate risk management and control arrangements .

¹ <https://www.sheffield.ac.uk/media/14952/download>

² <https://www.officeforstudents.org.uk/publications/terms-and-conditions-of-funding-for-higher-education-institutions/>

³ https://www.officeforstudents.org.uk/media/1406/ofs2018_01.pdf

⁴ <https://www.universitychairs.ac.uk/wp-content/uploads/2020/09/CUC-HE-Code-of-Governance-publication-final.pdf>

⁵ <https://www.advance-he.ac.uk/>

- To ensure that the University delivers its charitable objectives for the public benefit.
- To ensure that the University's Charter and Statutes are followed at all times; including that it conducts its business with regard to best practice in higher education and corporate governance and in accordance with the public interest governance principles drawn up by the OfS (Appendix One) and the principles of Public Life drawn up by the Committee on Standards in Public Life (Appendix Two), such that the University operates openly, honestly, accountably and with integrity; and promotes equality and diversity throughout the University, including in relation to its own operation.
- To ensure Academic freedom with thin the law, such that Teaching and Research staff can question and test received wisdom, and advance new ideas, or controversial, or unpopular opinions;
- To take such steps as are reasonably practicable to ensure that Freedom of Speech within the law is secured within the University;

2. Standards and behaviours

- (a) Members are expected to conduct themselves in accordance with accepted standards of behaviour in public life, which embrace selflessness, integrity, objectivity, accountability, openness, honesty and leadership (see Appendix Two).
- (b) As charitable trustees, members are expected to discharge their duties of compliance, prudence and care and to accept ultimate responsibility for the affairs of the University and for ensuring that it delivers its charitable objectives for the public benefit. These duties are described more fully in section 6.2.
- (b) Members are expected to have a strong personal commitment to Higher Education and the values, aims and objectives of the University. They are expected to act as ambassadors and influencers for the University, promoting its activities and strategic aims in the wider community.
- (c) Members are expected at all times to act fairly and impartially in the interests of the University as a whole, using independent judgement and maintaining confidentiality as appropriate, particularly in relation to closed matters or which are commercial in confidence.
- (d) Members are expected to play an appropriate part in ensuring that the necessary business of Council is conducted efficiently and effectively. They are expected to use their knowledge and skills to make constructive and rational contributions to debate, to apply strategic insight to complex issues, and to challenge constructively and act as a critical friend to the University. In doing this, they must recognise the proper separation between governance and executive management.
- (e) Members are responsible for ensuring that Council exercises control over the strategic direction of the University and that the performance of the University is adequately assessed against the objectives approved by Council as part of the Strategic Plan.
- (f) Members are expected to act in a corporate manner, such that decisions are taken collectively by all members acting as a body in the interests of the institution. Members, whether elected or appointed, may not act as if delegated by a group or as a representative of a particular constituency or interest group, and may not be bound in any way by mandates given to them by others.

3. Other expectations

- (a) Members are required to submit an annual return to the University's Register of Interests, to be made publicly available via the University's web pages. With respect to Council business, they must disclose any interest they have in any matter under discussion and accept the ruling of the Chair in relation to the management of that situation, so that the integrity of Council's business is maintained.
- (b) Members are asked to declare that they are 'fit and proper' persons as defined by the OfS⁶ and disclose to the University Secretary the existence of any 'indicator', as defined by the OfS.
- (c) Members are expected to attend all Council meetings and meetings of any other University committees of which they are a member, or to give timely apologies for absence.
- (d) Members are expected to participate as appropriate in induction and development activities arranged by the University or provided by AdvanceHE through its Governor Development Programme⁷.
- (e) Members may from time to time, and in accordance with the Regulations of Council and Financial Regulations, be asked to witness the application of the University Seal and act as a formal signatory to sealed documents on behalf of the University.

4. Staff and student members of Council

The expectations detailed above apply to all members of Council. It is recognised, however, that the particular knowledge and understanding that staff and student members bring to Council debate (for example in terms of direct experience of institutional life and enabling links to be made with the academic governance of the University), while valuable, can give rise to perceived conflicts of interest, and the fact that they are internal stakeholders of the University as well as governing body members can sometimes lead to uncertainty as to their role on Council. This duality should not, however, be allowed to confuse the key principle that all Council members are charitable trustees and have a corporate responsibility that overrides any other role they may be perceived to have.

5. Professional indemnity

Individual members of Council are covered by the University's Professional Indemnity and Directors & Officers insurance policies in respect of the costs of any claim of negligence or other wrongful act which may be made against them in a personal capacity in the carrying out of their duties as a member of Council. This policy also applies to lay members of Council serving on sub-committees.

6. Additional information

6.1. The University as the recipient of public funds

The OfS requires institutions to comply with the terms and conditions of funding for higher education institutions⁸. In meeting its collective responsibility for overseeing the institution's activities and in addition to complying with the ongoing conditions of

⁶ https://www.officeforstudents.org.uk/media/1094/ofs2018_04.pdf

⁷ <https://www.lfhe.ac.uk/en/programmes-events/programmes/governor-development-programme/index.cfm>

⁸ <https://www.officeforstudents.org.uk/publications/terms-and-conditions-of-funding-for-2019-20/>

OfS registration, Council should expect to receive assurance that the University:

- (a) has a robust and comprehensive system of risk management, control and corporate governance. This should include the prevention and detection of corruption, fraud, bribery and irregularities;
- (b) has regular, reliable, timely and adequate information to monitor performance and track the use of public funds;
- (c) plans and manages its activities to remain sustainable and financially viable;
- (d) informs the OfS of any material adverse change in its circumstances, including any significant developments that could impact on the mutual interests of the University and the OfS;
- (e) uses public funds for proper purposes and seek to achieve value for money from them;
- (f) complies with the mandatory requirements relating to audit and financial reporting, as set out in the annual accounts direction;
- (h) sends requested information to the OfS, including the annual accountability return, other requested information or any data requested by HESA;
- (i) has effective arrangements for the management and quality assurance of data submitted to HESA, the OfS, Student Loans Company and other funding bodies;
- (j) has an effective framework to manage the quality of learning and teaching and to maintain academic standards;
- (k) considers and takes appropriate action in relation to the OfS's assessment of institutional risk.

6.2. The University as a Charity

The University has charitable status as an exempt charity⁹, and members of Council are charitable trustees, subject to the obligations this imposes under charity law. They are expected to discharge their duties of compliance, prudence and care and to accept ultimate responsibility for the affairs of the University and for ensuring that it delivers its charitable objectives for the public benefit. The Charity Commission provides detailed information about the responsibilities of charitable trustees¹⁰, Exempt Charities¹¹, and Public Benefit¹². The OfS, being the principal charity law regulator of Exempt HEIs, has a duty to promote compliance with charity law by the charity trustees of those charities it oversees and has summarised the main statutory obligations applicable to exempt charities¹³. The OfS focuses on promoting compliance with legal obligations in exercising control and management of the administration of the Charity. The OfS' role as principal regulator does not mean that the Commission has no jurisdiction in relation to Exempt HEIs. It does, and will continue to, play a significant role in their oversight and regulation and the two bodies have published a joint Memorandum of Understanding setting out how they will work together¹⁴.

⁹ <https://www.gov.uk/government/publications/exempt-charities-cc23>

¹⁰ <http://www.charitycommission.gov.uk/publications/cc3.aspx>

¹¹ <https://www.gov.uk/government/publications/exempt-charities-cc23>

¹² <https://www.gov.uk/guidance/public-benefit-rules-for-charities>

¹³ https://www.officeforstudents.org.uk/media/1449/ofs2018_23.pdf (Annex A)

¹⁴ <https://www.gov.uk/government/publications/mou-charity-commission-ccew-and-the-office-for-students-ofs>

- (a) In relation to compliance, members are expected to ensure that the University complies with charity law and the requirements of the OfS as regulator¹⁵; to ensure that the University complies with other relevant legislation, in particular the Further and Higher Education Act 1992 and the Higher Education and Research Act 2017, and legislation relating to employment, health and safety and diversity and equality of opportunity; and to ensure that the University acts in accordance with its Charter and Statutes and has adequate and effective arrangements for Council to receive assurance that it delivers its charitable purposes for the public benefit and submits information required by the OfS as a regulator of exempt charities. Members are expected to act in the interests of the University, with integrity and avoiding personal conflicts of interest. As charitable trustees, members of Council should note that they also owe a fiduciary duty to University creditors, to whom they should have due regard when considering financial matters.
- (b) In relation to prudence, members are expected to ensure that the University has the means to meet its obligations when it is entering into substantial contracts or financial commitments, that all of its funds and assets (including land and buildings and not just public funds or grants) are used only in furtherance of its charitable objectives, that undue risk to its property, funds, assets or reputation is avoided and that special care is taken in relation to investment or borrowing.
- (c) In relation to care, members are expected to act with reasonable care and skill to ensure that the University is well-run and efficient. Exercise of this duty also means considering taking external professional advice on matters where there may be material risk, or where the trustees may be in breach of their duty.

University Secretary

September 2019 (updated)

¹⁵ See https://www.officeforstudents.org.uk/media/1449/ofs2018_23.pdf

Extract from the OfS Securing student success: Regulatory framework for higher education in England

Annex B: Public interest governance principles

The public interest governance principles applicable to all registered providers:

- I. **Academic freedom:** Academic staff at an English higher education provider have freedom 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 they may have at the provider
- II. **Accountability:** The provider operates openly, honestly, accountably and with integrity and demonstrates the values appropriate to be recognised as an English higher education provider.
- III. **Student engagement:** The governing body ensures that all students have opportunities to engage with the governance of the provider, and that this allows for a range of perspectives to have influence.
- IV. **Academic governance:** The governing body receives and tests assurance that academic governance is adequate and effective through explicit protocols with the senate/academic board (or equivalent).
- V. **Risk management:** The provider operates comprehensive corporate risk management and control arrangements (including for academic risk) to ensure the sustainability of the provider's operations, and its ability to continue to comply with all of its conditions of registration.
- VI. **Value for money:** The governing body ensures that there are adequate and effective arrangements in place to provide transparency about value for money for all students and (where a provider has access to the student support system or to grant funding) for taxpayers.
- VII. **Freedom of speech:** The governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider.
- VIII. **Governing body:** The size, composition, diversity, skills mix, and terms of office of the governing body is appropriate for the nature, scale and complexity of the provider.
- IX. **Fit and proper:** Members of the governing body, those with senior management responsibilities, and individuals exercising control or significant influence over the provider, are fit and proper persons.

Additional public interest governance principles applicable to providers authorised with DAPs:

- X. **Records:** Where degree awarding powers are solely contained in the provider's governing documents, and no order either under section 76 of the Further and Higher Education Act 1992, or under HERA exists, the provisions setting out those powers must be retained and may not be altered without the consent of the OfS²⁵.

Additional public interest governance principles applicable to providers in receipt of financial support from the OfS or from UKRI:

- XI. **Independent members of the governing body:** There must be at least one external member of the governing body who is independent of the provider, and whose term of office is normally limited to a maximum of three terms of three years or two terms of four years. For providers with large governing bodies, or more complex legal forms, additional independent members may be appropriate
- XII. **Regularity, propriety and value for money:** The governing body ensures that there are adequate and effective arrangements in place to ensure public funds are managed appropriately, in line with the conditions of grant and the principles of regularity, propriety and value for money, and to protect the interests of taxpayers and other stakeholders. This also applies to any funds passed to another entity for the provision of facilities or learning and teaching, or for research to be undertaken.

²⁵ This principle ensures that appropriate records are kept regarding degree awarding powers, where no order exists. This is primarily applicable to providers that obtained their powers before 1992, and/or that are incorporated via Royal Charter or a Private Act.

The 7 principles of public life

1. Selflessness

Holders of public office should act solely in terms of the public interest.

2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

(<https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life>)