



The role and responsibilities of members of Council

Background

The Council is the University's governing body. Subject to the role 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 Governance.⁴ 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.

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

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<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

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<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 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.
- 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;
- To ensure that systems are in place for meeting all the University's legal obligations, including those relating to health and safety and those arising from contracts and other legal commitments made in the University's name;
- To make provision for the general welfare of students, in consultation with the Senate.

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.
- (g) Members are expected to follow the University Code of Conduct for members of Council (see Appendix 3), which will be shared with new members as part of their induction to Council and signed by them as having been read and understood.

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 Programme.⁷

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

⁷ <https://www.lfhe.ac.uk/download.cfm/docid/B276AF88-CA64-4C9B-9BD2B161C2ECDB89>

- (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 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;

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

- (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.

- (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

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>

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

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

June 2021 (updated)

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 OfS¹⁶.

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.

¹⁶ 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>

Members of the Council – Code of Conduct

1. GENERAL

- 1.1** I will recognise and understand that the Council is part of the constitutional and administrative structures of the University of Sheffield and act within the governing documents of the University of Sheffield and the law, and abide by the policies and procedures of the organisation. This includes having a knowledge of the contents of the Charter, Statute, Regulations and Standing Orders of the University and relevant policies and procedures, all of which is covered upon induction.
- 1.2** I will act in accordance with the Committee of University Chairs Higher Education Code of Governance, the Office for Students public interest governance principles and the Nolan seven principles of public life.
- 1.3** I will support the charitable objects and mission of the University of Sheffield, championing it, using any skills or knowledge I have to further that mission and seeking expert advice where appropriate, including through the University Secretary as required.
- 1.4** I will be an active member of the Council and as a trustee, making my skills, experience and knowledge available to the University and seeking to do what additional work I can outside Council meetings, including sitting on sub-committees of the Council.
- 1.5** I will respect, promote and preserve the obligations of organisational, Council and individual confidentiality including about sensitive Council matters, including where there is a commercial interest or in protecting the privacy of individuals. However, the requirement for confidentiality may not apply if it becomes necessary for the trustee to inform the Office for Students or the Charities Regulator or any other statutory body about any matter which could threaten the future of the University or could represent a breach of any law with which the University is required to comply.
- 1.6** I will develop and maintain a sound and up-to-date knowledge of the University and its environment. This will include an understanding of how the University operates, the social, political and economic environment in which it operates and the nature and extent of its work.
- 1.7** I will seek to be accountable for my actions as a Council member and trustee, and will submit myself to whatever scrutiny is appropriate.

- 1.8 I accept my responsibility to ensure that the University is well run and will raise issues and questions in an appropriate and sensitive way to ensure that this is the case.

2. MANAGING INTERESTS

- 2.1 I will not gain materially or financially from my involvement with the University unless specifically authorised to do so.
- 2.2 I understand that I must declare annually that I am a 'fit and proper' person as defined by the OfS and disclose to the University Secretary the existence of any 'indicator', as defined by the OfS, as soon as reasonably possible.
- 2.3 I will act in the best interests of the University as a whole, and not as a representative of any person or group – considering what is best for the University and its present and future beneficiaries and avoiding bringing the University into disrepute.
- 2.4 I will ensure the University's conflict of interest register is completed and updated as required.
- 2.5 Unless authorised, I will not put myself in a position where my personal interests conflict with my duty to act in the interests of the University. Where there is an actual or perceived conflict of interest I will ensure that this is managed effectively in line with Conflict of Interest in Decision Making policy. I understand that a failure to declare a conflict of interest may be considered to be a breach of this code.

3. MEETINGS

- 3.1 I will attend all appropriate meetings and other appointments at the University or give apologies to the University Secretary.
- 3.2 I will prepare fully for all meetings and act on behalf of the University. This will include reading papers, querying matters I do not understand, thinking through issues before meetings and completing any tasks assigned to me in the agreed time.
- 3.3 I will actively engage in discussion, debate and voting in meetings; contributing in a considered and constructive way, listening carefully, challenging sensitively and avoiding conflict. I will welcome challenge from other members of Council and will promote frank but respectful debate.
- 3.4 I will make decisions, as part of the Council, which take into account all relevant matters, and disregard any irrelevant matters, for the benefit of the University and its ability to fulfil its charitable objects and strategic objectives, seeking excellence in pursuit of the same.
- 3.5 I will participate in collective decision-making, accept a majority decision of the Council and uphold collective responsibility on all Council decisions. I will not act individually unless specifically authorised to do so. Should I find myself in a situation where I cannot uphold collective responsibility, I shall resign from the Council, explaining why I

can no longer support the decision taken. I will continue to respect the confidentiality of all information I have acquired as a result of my membership of the Council.

4. GOVERNANCE

- 4.1 I will actively contribute towards improving the governance of the Council, participating in induction and training and sharing ideas for improvement with the Council, including as part of the annual reflection (through questionnaire survey) and the regular Council Effectiveness Reviews.
- 4.2 I will help to identify candidates for Council and Committee membership, in accordance with the selection criteria, for proposal to the Council Nominations Committee.

5. RELATIONS WITH OTHERS

- 5.1 I will endeavour to work considerately and respectfully with all those I meet as a member of the University. I will respect diversity, different roles and boundaries, and avoid giving gratuitous offence.
- 5.2 I recognise that the roles of Council members, Executive Board members, Senate members and the Students' Union members are different, and I will seek to understand and respect the difference between these roles. I will provide appropriate oversight, and strategic direction, and refrain from being involved in the operational management of the University as delegated from the Council to the President and Vice-Chancellor and others, as set out in the Council Scheme of Delegation.
- 5.3 Where I also volunteer with the University, I will maintain the separation of my role as a Council member and trustee and as a volunteer.
- 5.4 I will seek to support and encourage all those I come into contact with at the University of Sheffield. In particular I recognise my responsibility to support the Chair and other Officers of the University.
- 5.5 I will make sure that the good name of the University is upheld and promoted when dealing with internal and external parties.

6. LEAVING THE COUNCIL

- 6.1 Members of Council may resign by letter addressed to the University Secretary. If I wish to cease being a Council member and trustee of University at any time, I will inform the University Secretary in advance in writing, stating my reasons for leaving.
- 6.2 I understand that the Council may remove from office any member of Council for conduct, which in the reasonable opinion of the Council, is inappropriate to the holding of such office including a breach of this Code of Conduct.
- 6.3 I understand that the Council will not remove a Member of Council from office until there has been a process of review by and recommendation from the Council's

Nominations Committee and this process shall include the member who is proposed to be removed from office being given a reasonable opportunity of being heard.

- 6.4 I understand that substantial breach of any part of this Code may result in procedures being put in motion that may result in my being asked to resign from the Council or my being removed.

- 6.5 Should this happen I will be given the opportunity to be heard. In the event that I am asked to resign from the Council, I will accept the decision of the Council, on the recommendation of the Council Nominations Committee in this matter and resign at the earliest opportunity.

Signed: 

Name: 

Date: 