

CARDIFF METROPOLITAN UNIVERSITY

CODE OF CONDUCT FOR MEMBERS OF THE BOARD OF GOVERNORS AND ITS COMMITTEES

1. INTRODUCTION

1.1 This Code is intended as a guide for members of the Board of Governors and its Committees (including external co-opted members of the Audit Committee). It indicates the standards of conduct expected of governors and committee members so as to enable them to understand and carry out their legal duties and to conduct properly their relationships with the Higher Education Corporation and the Vice-Chancellor & Principal (hereinafter "Vice-Chancellor"). The Code is aimed, therefore, at promoting effective and well-informed corporate governance. It is not intended to be a definitive or authoritative statement of the law.

1.2 In addition to this Code, governors are recommended to familiarise themselves with:

- (a) the Instrument of Government;
- (b) the Articles of Government;
- (c) the Standing Orders;
- (d) the Corporate Strategic Plan;
- (e) the Financial Management Code issued in June 2017 by the Higher Education Funding Council for Wales (HEFCW);
- (f) the latest edition of the Higher Education Code of Governance issued by the Committee of University Chairs (CUC);
- (g) the University's Equal Opportunities Policies and the 'Whistleblowing' Code drawn up under the Public Interest Disclosure Act 1998.

Appendices 1, 2 and 3 are attached to this Code for easy reference. They should not be read as an exhaustive statement of duties, powers or provisions, and governors should refer to the source documents listed above. If a governor is in doubt about the provisions of any of these documents, the Clerk should be consulted and, if necessary, legal advice will be obtained. However, ultimate responsibility for the appropriateness of conduct as a member of a corporate body and for any act or omission in that capacity rests with the individual governor.

1.3 This Code applies to every committee, working party or other subsidiary body of the University to which governors may be appointed.

1.4 Acceptance of appointment as a member of the Board of Governors will be construed as acceptance of this Code.

2. INTERPRETATION

- 2.1 In this Code “University” means Cardiff Metropolitan University and “governor”, “Chair”, “Vice-Chancellor” and “Clerk” mean respectively a member of the Board of Governors, the Chair, Vice-Chancellor and Clerk for the time being of the University. All other definitions have the same meanings as given in the University’s Instrument and Articles of Government, and words importing one gender will import either gender.

3. DUTIES

- 3.1 Each individual governor owes a fiduciary duty to the University as a governor and, since the University’s registration as a charity in 2011, as a charity trustee. This means that governors should show it the highest loyalty, act in good faith in the University’s interests and not make a private profit from the office of governor. Governors should act honestly, diligently and, subject to the provisions appearing in paragraph 7 of this Code relating to collective responsibility, independently.
- 3.2 Whatever decisions governors take at meetings of the Board of Governors and its committees must be for the benefit of the University as a whole and not for any improper purpose or for personal motive. The “benefit of the University” can be taken to mean, first and foremost, the interests of its students and other users of the University’s services, and the safeguarding of public funds. Governors should have regard to those interests, and must not allow any sectional interest to take precedence. In particular, governors are not appointed as ‘representatives’ or ‘delegates’ of any outside body, and may not lawfully be bound by mandates given by others.
- 3.3 Governors must observe the provisions of the University’s Instruments and Articles of Government and in particular the responsibilities given to the Corporation by Article 3(1) of the Articles of Government. Those responsibilities, including a list of responsibilities which are so important that they must not be delegated, are set out in Appendix 1.
- 3.4 Governors should familiarise themselves with the University’s ‘Whistleblowing’ Code and Equal Opportunities policies.
- 3.5 Governors should also have regard to the different but complementary responsibilities given to the Vice-Chancellor as the University’s Chief Executive. Whereas it is the Board of Governors’ function to decide strategic policy and overall direction and to monitor the performance of the Vice-Chancellor and any other senior post holders, it is the Vice-Chancellor’s role to implement the Board’s decisions and to manage the University’s affairs within the budgets and framework fixed by the Board. Governors should work together so that the Board of Governors and the Vice-Chancellor perform their respective roles effectively.
- 3.6 Governors are collectively responsible for observing the duties set out in the Financial Management Code issued by HEFCW. A summary of the more important requirements of the Financial Management Code is set out in Appendix 2.
- 3.7 Although HEFCW is a significant provider of funds to the University, governors should note that they are also responsible for the proper use of income derived from other sources.
- 3.8 As governing bodies of higher education institutions are entrusted with public funds and therefore have particular duties to fulfil the highest standards of corporate governance at all times, they were included among the public spending bodies

examined by the Committee on Standards in Public Life. Consequently, members of governing bodies should observe the Seven Principles of Public Life drawn up by the Committee, viz. selflessness, integrity, objectivity, accountability, openness, honesty and leadership. These principles are set out in Section 1 of the 2014 edition of the CUC Code.

4. SKILL, CARE AND DILIGENCE

- 4.1 Governors should in all their work for the University exercise such skills as they possess and such care and diligence as would be expected from reasonable persons in the circumstances. This will be particularly relevant when governors act as agents of the University, for example, when functions are delegated to a committee of the Board of Governors or the Chair. Governors should be careful to act within the terms of reference of any committees on which they serve.

5. POWERS

- 5.1 Governors are responsible for taking decisions which are within the powers given to the University by Section 124 of the Education Reform Act 1988 (as amended by the Further and Higher Education Act 1992). A summary of those powers is set out in Appendix 3. If a governor thinks that the University is likely to exceed its powers by taking a particular decision, the matter should be referred immediately to the Clerk for advice.

6. CONFLICTS OF INTEREST

- 6.1 As persons who owe a fiduciary duty, governors should seek to avoid putting themselves in a position where there is a conflict (actual or potential) between their personal interests and their duties to the University. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.
- 6.2 Declarations of interests are dealt with at clause 9 of the Articles of Government. Governors have a duty to disclose any financial interest which they have, or may have, in:
- (a) the supply of work or goods to or for the purposes of the University;
 - (b) any contract or proposed contract concerning the University, or
 - (c) any other matter relating to the University.
- 6.3 An interest, however, does not have to be financial for the purposes of disclosure. If it is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a governor's independent judgement, then the interest, financial or otherwise, should:
- (a) be reported to the Clerk, and
 - (b) be disclosed to the Board of Governors before the matter giving rise to the interest is considered.

Governors may be asked to withdraw from that part of the meeting at which the matter giving rise to the interest is considered, and on no account may vote in relation to the matter.

- 6.4 Governors must not receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity. Any offer or receipt of such gifts, hospitality or benefits should immediately be reported to the Clerk.
- 6.5 The Clerk will maintain a Register of Interests which will be open for public inspection. Governors are invited to disclose routinely to the University all business interests, financial or otherwise, which they or (so far as they are aware) their spouses or partners, children or other close relatives may have; the Clerk will enter such interests on the Register. Governors should inform the Clerk whenever their circumstances change and interests are acquired or lost.

7. COLLECTIVE RESPONSIBILITY

- 7.1 The Board of Governors operates by governors taking majority decisions at quorate meetings. Therefore, a decision of the Board, even when it is not unanimous, is a decision taken by the governors collectively and each individual governor has a duty to stand by it, irrespective of presence at the meeting of the Board when the decision was taken.
- 7.2 The first duty of a governor who disagrees with a decision taken by the Board is to have the matter of disagreement discussed and minuted. If the governor strongly disagrees, the Chair should be consulted and, if necessary, the matter raised with the Board when it next meets. If no meeting is scheduled, the governor should refer to clause 7 (c) of the Articles of Government as to the power to call a special meeting and, if appropriate, exercise it, requesting the Clerk to circulate the governor's views in advance to the other members of the Board of Governors. Alternatively, the governor may, after consultation with the Chair if appropriate, decide to offer to resign from the Board.

8. CONFIDENTIALITY

- 8.1 Because of the University's public accountability, governors should ensure that, as a general principle, students and staff of the Institution have free access to information about the proceedings of the Board of Governors. Accordingly, agendas, minutes and other papers relating to meetings of the Board are normally available for public inspection when they have been approved for publication.
- 8.2 There will be occasions when the record of discussions and decisions will not be made available for public inspection, for example when the Board *or its Committees receive personal data or consider sensitive, commercial or strategic issues*.
- 8.3 It is important that the Board and its committees have full and frank discussions in order to take decisions collectively. To do so there must be trust between governors with a shared corporate responsibility for decisions. Governors should keep confidential any matter which, by reason of its nature, the Chair or members of the Board of Governors or the Chair or members of any Committee of the Board of Governors are satisfied should be dealt with on a confidential basis.

- 8.4 Governors should not make statements to the press or media or at any public meeting relating to the proceedings of the Board of Governors or its Committees without first having obtained the approval of the Chair or, in the Chair's absence, the Vice Chair. It is unethical for members of the Board of Governors publicly to criticise or reveal the views of identified governors which have been expressed at meetings of the Board of Governors or its Committees.

9. ATTENDANCE AT MEETINGS

- 9.1 A high level of attendance at meetings of the Board of Governors and its Committees is expected to enable governors to perform their functions properly.

10. GOVERNANCE DEVELOPMENT

- 10.1 Governors are encouraged to obtain a thorough grounding in their duties and responsibilities by participating in the University's training programme.
- 10.2 In order to promote effective governance, the Board of Governors will carry out, as part of a continuing process of self-evaluation, regular reviews of the performance by the Board of Governors of its duties and responsibilities.

SUMMARY OF RESPONSIBILITIES OF MEMBERS OF THE BOARD OF GOVERNORS

Under Article 3(1) of the University's Articles of Government the Board of Governors shall be responsible for:

- (a) the determination of the educational character and mission of the University and for oversight of its activities;
- (b) the effective and efficient use of resources, the solvency of the University and the Corporation and for safeguarding their assets;
- (c) approving annual estimates of income and expenditure;
- (d) the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the Vice-Chancellor, the Clerk to the Board and the holders of such senior posts as the Board may determine after consultation, where appropriate, with the Vice-Chancellor;
- (e) the appraisal of the Vice-Chancellor and the Clerk to the Board of Governors, and
- (f) the setting of a framework for the pay and conditions of service of all other staff.

Article 5(4) of the Articles of Government prohibits the Board of Governors from delegating the following:

- (a) the determination of the educational character and mission of the University;
- (b) the approval of the annual estimates of income and expenditure and final accounts in respect of each financial year;
- (c) ensuring the solvency of the University and the Corporation and the safeguarding of their assets;
- (d) the appointment or dismissal of the Vice-Chancellor; and
- (e) the varying or revoking of the Articles of Government.

SUMMARY OF THE MAIN PROVISIONS OF
HEFCW'S FINANCIAL MANAGEMENT CODE
DATED 16 JUNE 2017

The Financial Management Code sets out the requirements concerning the organisation and management of financial affairs to which regulated institutions must adhere. The Code has been prepared in response to the relevant provisions contained within the Higher Education (Wales) Act 2015 ("the 2015 Act").

The following is a summary of the responsibilities of the University to HEFCW and its students as set out in the Financial Management Code.

The governing body of the institution must ensure that the institution takes all necessary steps to comply with this Code.

Proper stewardship of funds: the governing body must ensure that all reserves are used for the purposes intended, should review any relevant guidance on accountability or propriety issued from time to time by HEFCW and should also take into account the guidance of relevant stakeholder bodies in relation to the organisation and management of financial affairs.

Sound financial management: the governing body must ensure that it has appropriate arrangements for the organisation and management of its financial affairs, including an adequate and effective internal control environment.

Plan on a sustainable basis: the governing body must plan and conduct its financial affairs on a sustainable basis.

Effective risk management processes: the institution must ensure that it has an effective policy of risk management which is able to demonstrate that the organisation and management of the institution's financial affairs are appropriately controlled.

Accountable officer's role and responsibilities: the governing body must designate an individual (normally, but not necessarily, the head of the institution) as the 'accountable officer' to assist and enable the governing body to discharge its reporting responsibilities to HEFCW. The accountable officer is personally responsible to the governing body for providing HEFCW with clear assurances that the terms of this Code are being met.

Robust governance oversight of financial affairs: the governing body must ensure that there are robust governance arrangements in place that provide adequate and effective oversight of financial affairs. The governing body of an institution has ultimate responsibility for overseeing the institution's activities, for determining its future direction, and fostering an environment in which the institution's mission is achieved. This responsibility cannot be delegated.

Composition of the governing body: the composition of the governing body is first and foremost the responsibility of the governing body itself, acting within the bounds of the institution's governing documents. Governing bodies should have at least one member with relevant financial experience gained within a predominantly finance-based role. The institution's governing body must notify HEFCW of any failure, or likely failure to comply with this Code without delay. Should the accountable officer be implicated in wrongdoing in respect of that failure, this report must be made directly by the governing body.

Responsibility to provide HEFCW with accurate and timely information: the governing body must provide and make arrangements for HEFCW, or agents acting on its behalf, to receive such information, assistance and access to the institution's facilities as HEFCW or its agent reasonably requires for the purpose of exercising its functions in relation to compliance with the Code.

Prudent management of the estate: the institution's estate is likely to represent a materially significant part of the institution's asset base. Sound financial organisation and management processes include good management of the estate. Institutions must manage their estate in a sustainable way, in line with an estates strategy and a maintenance plan, covering its long-term and routine maintenance requirements. The institution should give due regard to the guidance issued from time to time by HEFCW on estate procedures.

Negative cash forecasts: the institution must prepare cashflow forecasts on a regular basis. Institutions should prepare annual and monthly forecasts covering the upcoming 12 months. 84. The governing body must inform HEFCW immediately if, at any point in the upcoming 12 months, negative net cash (as defined within FRS 102 S (7), including cash and cash equivalents) is forecast for more than 30 consecutive days.

Financial commitments: the primary responsibility for assessing the affordability of, and risks around, financial commitments rests with an institution's governing bodies. HEFCW's role is to assess whether any financial commitments entered into by the institution present challenges to the institution's sustainability or indicate issues in the organisation and management of financial affairs. Institutions must apply the following principles prior to entering into any financial commitments:

- a. The risks and affordability of any new on- and off-balance sheet financial commitments must be properly considered, including through the use of prudent, sensitised downside forecasts;
- b. Financial commitments must be consistent with the institution's strategic plan, financial strategy and treasury management policy;
- c. The source of any repayment of a financial commitment must be clearly identified and agreed by the governing body at the point of entering into that commitment;
- d. Planned financial commitments must represent value for money;
- e. The risk of triggering immediate default through failure to meet a condition of a financial commitment must be monitored and actively managed;
- f. The institution must ensure that it retains sufficient liquid cash or equivalents to service working capital requirements as well as a prudent level of liquid reserve to be called upon in the case of extraordinary events; and
- g. The institution's ability to maintain sustainability must not be impaired as a result of its financial commitments.

Institutions are able to make financial commitments up to a predefined threshold. The governing body must formally request permission from HEFCW to increase its threshold before it agrees to any new financial commitments that would result in the institution breaching its threshold.

SUMMARY OF THE POWERS OF THE CORPORATION

Under section 124 (1) of the Education Reform Act 1988 as amended (hereinafter “the Act”) a higher education corporation shall have power:

- (a) to provide higher education;
- (b) to provide further education;
- (c) to carry out research and to publish the results of the research or any other material arising out of or connected with it in such manner as the Corporation think fit;

Under section 124 (2) of the Act a higher education corporation may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of any of the powers conferred on it by section 124 (1) of the Act, including in particular the power :

- (a) to supply goods and services;
- (b) to acquire and dispose of land and other property;
- (c) to enter into contracts, including in particular:
 - (i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of the powers conferred on the Corporation by section 124 (1) above; and
 - (ii) contracts with respect to the carrying on by the Corporation of any such activities.
- (d) to borrow such sums as the Corporation think fit for the purposes of carrying on any activities they have power to carry on or meeting any liability transferred to them under Sections 126 of the Act (i.e. when the University achieved its corporate independence) and, in connection with such borrowing, to grant any mortgage, charge or other security in respect of any land or other property of the Corporation. This power may not be exercised without the consent of the Higher Education Funding Council for Wales (HEFCW), which may give its consent for a particular borrowing or for borrowing of a particular class;
- (e) to invest any sums not immediately required for any of the purposes mentioned in paragraph (d) above;
- (f) to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes; and
- (g) to do anything incidental to the conduct of an educational institution providing further or higher education.

The Corporation may also provide facilities of any description (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students having learning difficulties) which appear to be necessary or expedient for the purposes of or in connection with the powers conferred by section 124 (1) above.