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Guide

Guide for Members of Governing Bodies of Universities and Colleges in England, Wales and Northern Ireland

Committee of University Chairmen

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Introduction

Institutions of higher education are characterised by a distinctive ethos. Despite diverse backgrounds and traditions, they are united in the common purpose of the provision of teaching, and the pursuit of knowledge and research, including research which contributes to economic growth. They are also committed to the principle of academic freedom, that is the freedom to question received wisdom and put forward new and possibly controversial ideas. Additionally, they are autonomous organisations, responsible for the management and direction of their own affairs. Members of governing bodies need to recognise, and be committed to, the distinctive principles and ethos of higher education in order to contribute effectively to the work of the institution with which they are associated.

This Guide is intended to assist members of governing bodies of universities and colleges of higher education in England, Wales and Northern Ireland in the performance of their duties. The Guide is divided into two Parts. Part I is directly concerned with the role of the governing body. It outlines the legal status of institutions and their structures of governance, and considers the responsibilities of members of governing bodies towards their own institutions, to Government and Parliament, and to the wider community.

Part II of the Guide consists mainly of a series of appendices which provide background information about the higher education system. This information is included in order to help members of the governing body understand their role in a wider context.

The internal organisation, procedures and regulations of individual institutions vary enormously and the Guide presents only a broad overview. Members of governing bodies should refer to the secretary or registrar or clerk to their governing body for more detailed information and guidance about the internal arrangements in their particular institution, or about issues raised in the present Guide.

The Guide has been prepared by the Committee of University Chairmen (CUC) in association with the Higher Education Funding Council for England (HEFCE), the Higher Education Funding Council for Wales (HEFCW) and the Department of Higher and Further Education, Training and Employment for Northern Ireland (DHFETE), and in co-operation with Universities UK (formerly CVCP), the Association of Heads of University Administration (AHUA) and the Standing Conference of Principals (SCOP).

This is the third edition of the Guide and it has been updated to take account of various changes in higher education and the CUC's review of corporate governance published in December 2000.

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Glossary of Terms

The diversity of the higher education sector means that a wide range of terminology is used in matters of governance. General terms have therefore been used in this Guide to cover terms which are broadly analogous.

<i>The governing body</i>	the university council, board of governors or other body ultimately responsible for the affairs of the institution
<i>Member</i>	member of council, governor, board member
<i>Head of the institution</i>	the person with executive responsibility for the management of the institution, that is the vice-chancellor, principal, director, rector or provost
<i>Chairman</i>	the chairman, chairwoman, pro-chancellor or other person who takes the chair at meetings of the institution's governing body
<i>Secretary</i>	the clerk to the governing body, registrar, secretary or other person responsible for convening and arranging for the minuting of the meetings of the governing body

The following terms have also been used:

<i>Pre-1992 universities</i>	higher education institutions in England and Wales which had university status before the provisions of the Further and Higher Education Act 1992 came into force; and the two Northern Ireland universities
<i>Post-1992 universities</i>	higher education institutions (mainly former polytechnics) which acquired university designation as a result of the provisions of the Further and Higher Education Act 1992
<i>Colleges</i>	those higher education colleges which, under the provisions of the Further and Higher Education Act 1992, are funded by the Higher Education Funding Councils for England and Wales
<i>Funding Council</i>	the Higher Education Funding Council for England or the Higher Education Funding Council for Wales or, for the purposes of this Guide, the Department of Higher and Further Education, Training and Employment for Northern Ireland – DHFETE (formerly DENI)
<i>Institutions formerly funded by the PCFC (Polytechnics and Colleges Funding Council) or the Welsh LEAs</i>	the post-1992 universities and those higher education colleges now funded by the Higher Education Funding Councils for England and Wales

1 Summary of Responsibilities of Members of Governing Bodies

1.1 Institutions of higher education are legally independent corporate institutions which have a common purpose of providing teaching and undertaking research. They also contribute to economic growth through research and developing links with industry and the community. The council or board of governors is the executive governing body of the institution and carries responsibility for ensuring the effective management of the institution and for planning its future development. It has ultimate responsibility for all the affairs of the institution.

1.2 In the case of the pre-1992 universities, the constitution and powers of the governing body are laid down in, and limited by, the charter and statutes of the institution. For post-1992 universities and colleges, they are laid down in the Education Reform Act 1988 (as amended by the Further and Higher Education Act 1992), together with the instruments and articles of government. Some institutions are companies limited by guarantee, in which case the memorandum and articles of association incorporate the provisions of the instruments and articles of government. Governing bodies should ensure that their institutions do not extend their activities beyond those permitted by these documents.

1.3 The main responsibilities of the governing body are as follows.

Proper Conduct of Public Business

1.4 Governing bodies are entrusted with funds, both public and private, and therefore have a particular duty to observe the highest standards of corporate governance. This includes ensuring and demonstrating integrity and objectivity in the transaction of their business, and wherever possible following a policy of openness and transparency in the dissemination of their decisions.

(Further information: Section 4.)

Strategic Planning

1.5 The governing body has a duty to enable the institution to achieve and develop its primary objectives of teaching and research. This responsibility includes considering and approving the institution's strategic plan, which sets the academic aims and objectives of the institution and identifies the financial, physical and staffing strategies necessary to achieve these objectives.

1.6 The governing bodies of some institutions have established planning and resources committees to assist in these matters.

Monitoring Performance

1.7 The governing body should regularly monitor the performance of the institution against its planned strategies and operational targets.

(Further information: Section 4.)

Finance

1.8 The governing body's financial responsibilities include:

- ensuring the solvency of the institution and safeguarding its assets
- approving the financial strategy
- approving annual operating plans and budgets which should reflect the institution's strategic plan
- ensuring that funds provided by the Funding Council are used in accordance with the terms and conditions specified in the Funding Council's Financial Memorandum
- ensuring the existence and integrity of financial control systems and monitoring these through the Audit Committee
- receiving and approving annual accounts (financial statements).

(Further information: Section 5.)

Audit

1.9 The governing body is responsible for directing and overseeing the institution's arrangements for internal and external audit.

(Further information: Section 5.)

Estate Management

1.10 The governing body is responsible for oversight of the strategic management of the institution's land and buildings. As part of this responsibility it should consider, approve and keep under review an estate strategy which identifies the property and space requirements needed to fulfil the objectives of the institution's strategic plan, and also provides for a planned programme of maintenance.

(Further information: *Estate strategies: a guide to good practice*, HEFCE reference 00/04.)

Charitable Status

1.11 All higher education institutions have charitable status under the Charities Act 1993. In the case of the institutions which are exempt or excepted charities under the above Act, members of the governing body are not, in a legal sense, trustees. However, in all cases, members of governing bodies must ensure that the property and income of the institution are applied only in support of purposes which are charitable in law.

(Further information: Section 2.)

Staffing

1.12 The governing body has responsibility for the institution's employment policy. This includes ensuring that pay and conditions of employment are properly determined and implemented. The governing body is also responsible for appointing and setting the terms and conditions for the head of the institution and such other senior posts as it may from time to time determine.

(Further information: Sections 4 and 6.)

Students' Union

1.13 In England and Wales, the Education Act 1994 requires the governing body to take such steps as are reasonably practicable to ensure that the Students' Union operates in a fair and democratic manner and is accountable for its finances. The Act does not apply in Northern Ireland, but governing bodies are nevertheless required to apply most of its terms in relation to Students' Unions.

(Further information: Section 7.)

Health and Safety

1.14 Under the Health and Safety at Work Act 1974 or, in Northern Ireland, the 1978 Health and Safety at Work Order, the governing body carries ultimate responsibility for the health and safety of employees, students and other individuals whilst they are on the institution's premises and in other places where they may be affected by its operations. The governing body's duties include ensuring that the institution has a written statement of policy on health and safety, and arrangements for the implementation of that policy.

(Further information: Annex E.)

2 Legal Status of Institutions

Background: Institutions in the Higher Education Sector in England, Wales and Northern Ireland

2.1 The institutions which make up the current higher education sector in England, Wales and Northern Ireland have diverse backgrounds and traditions which are reflected in their constitutional arrangements and the structure and powers of their governing bodies. They can, however, be divided into two broad groups:

- **pre-1992 universities.** In England and Wales most of these were funded by the Universities Funding Council (UFC) or directly funded by the then Department of Education (ie the Open University and Cranfield University). In Northern Ireland, they were funded by the then Department of Education for Northern Ireland (DENI) on the advice of the UFC
- **post-1992 universities and the colleges.** In England most of these were funded by the Polytechnics and Colleges Funding Councils (PCFC), and in Wales by the Welsh Office or Welsh local education authorities.

2.2 The pre-1992 universities are a very diverse group. They include such broad categories as the ancient universities of Oxford and Cambridge, the federal University of London, the federal colleges of the University of Wales, the 'civic' universities founded in the late nineteenth and early twentieth centuries, the former university colleges which awarded degrees of the University of London, the group of universities established in the 1960s, and the Colleges of Advanced Technology which achieved university status following the Robbins Report of 1963.

2.3 Most of the post-1992 universities are former polytechnics which until 1988 (or 1992 in Wales) were part of, and funded by, local education authorities and awarded degrees validated by the Council for National Academic Awards (CNAA). The Education Reform Act 1988 made them into independent corporations and established the PCFC, which took over responsibility for funding these institutions in England. Subsequently the Further and Higher Education Act 1992 enabled these institutions to award degrees in their own right, and to acquire the title of university.

2.4 The colleges of higher education which form part of the higher education sector in England were also funded by the PCFC following the passage of the Education Reform Act 1988. In Wales the colleges continued to be funded by the local education authority until 1992 or, in two cases, 1993. A further voluntary college was funded by the Welsh Office. For the sake of simplicity, these are referred to in this document as 'institutions formerly funded by Welsh local education authorities'. A number of colleges of higher education are provided by churches. These colleges often have ties to the providing bodies, which may have the right to be represented on the governing body, together with institutional trustees. The providing bodies have the power to determine the character of the institution and in some cases also have jurisdiction over the institution's assets.

2.5 The colleges can be divided into two groups: general colleges offering a range of courses which may be narrower than in the universities, often with the emphasis on business and management, humanities and education; and specialist colleges with more than half their students in one academic subject category, such as education, music, or art and design. Some of the colleges of higher education have been granted powers to award their own degrees and the title of 'University College'.

2.6 The Further and Higher Education Act 1992 established the Higher Education Funding Councils for England, Wales and Scotland, which took over responsibility for funding all higher education institutions in their respective areas. In England the Higher Education Funding Council also funds most higher education courses provided by further education colleges.

2.7 The Further and Higher Education Act did not apply to Northern Ireland, but under the terms of the Education and Libraries (NI) Order 1993 DENI – now the Department of Higher and Further Education, Training and Employment in Northern Ireland (DHFETE) – continued to fund the two Northern Ireland universities. An advisory council, the Northern Ireland Higher Education Council (NIHEC), was established to advise on the levels of funding which the universities should receive.

Legal Status of Institutions

2.8 Although the institutions in the current higher education sector are diverse in origin, size and organisation, they share the following characteristics of being:

- legally independent corporate institutions
- bodies with charitable status
- accountable through a governing body which carries ultimate responsibility for all aspects of the institution.

2.9 The legal status of particular institutions can, however, take different forms, as described below.

Pre-1992 Universities (England, Wales and Northern Ireland)

2.10 Most of the pre-1992 universities were established by a royal charter granted through the Privy Council, together with an associated set of statutes. This form of organisation is known as a chartered corporation.

2.11 A very small number of pre-1992 universities were established by a specific Act of Parliament, whose operative part is a set of statutes. This form of organisation is known as a statutory corporation.

2.12 The structure of governance for each university is laid down in the instruments of its incorporation (ie the Act or charter and the statutes). The charter and statutes can only be amended by the Privy Council.

2.13 The Universities of Oxford and Cambridge have neither an Act of Parliament nor a charter, but do have a body of statutes, changes to the more important of which require the authority of the Privy Council. A further exception is the London School of Economics, which is a company limited by guarantee (see paragraph 2.16).

2.14 As successive generations of universities obtained their statutes, significant variations and differences were introduced.

Post-1992 Universities and Colleges of Higher Education (England and Wales)

2.15 The Education Reform Act 1988 established as higher education corporations (HECs) certain higher education institutions in England previously maintained by, and part of, local education authorities. The Act stipulated that any HEC should be conducted in accordance with articles of government approved by the Secretary of State. Model articles were prepared by the Department of Education and Science to guide institutions in drawing up their own articles. The Further and Higher Education Act 1992 extended the provisions of the 1988 Act to Wales. It also amended the earlier legislation and set out the general format for an instrument of government, to be made by each HEC and approved by the Privy Council, governing the membership and constitution of the governing body. The Act also required HECs subsequently to make new articles of government to be approved by the Privy Council.

2.16 While most of the former polytechnics are governed by HECs, five (formerly administered by the Inner London Education Authority) are established under the Companies Act as companies limited by guarantee. Such institutions are founded on a memorandum and articles of association which incorporate the provisions of the instruments and articles of government required in the 1988 and 1992 Acts. The governing body also acts as the board of directors for the company. Other companies limited by guarantee include a small number of general and specialist HE colleges formerly funded by the PCFC.

2.17 Some colleges are established as charitable trusts under a trust deed or through a scheme made by the Charity Commissioners. They are subject to supervision by the Charity Commissioners and operate under instruments and articles of government approved by the Privy Council. (See also paragraph 2.18.)

Charitable Status

2.18 All higher education institutions have charitable status. Usually they are exempt or excepted charities under the Charities Act 1993, ie they are not subject to the jurisdiction of the Charity Commissioners. However, institutions established as charitable trusts (see paragraph 2.17) and some of those which are companies limited by guarantee (see paragraph 2.16) are registered charities and do come under the jurisdiction of the Charity Commissioners.

2.19 Charitable status confers the following benefits:

- exemption from capital gains tax, and from income tax and corporation tax on income other than trading income arising outside the course of carrying on the primary purpose of the institution

- ability to recover income tax deducted from deeds of covenant and receipts under gift aid
- exemption from inheritance tax for donors to institutions
- substantial relief on business rates.

2.20 All higher education institutions are normally exempt from VAT on the supply of education and research. They may however be liable for VAT on trading activities.

2.21 Requirements that members of governing bodies need to bear in mind in relation to the charitable status of their institutions include:

- applying the assets and income of the institution only for the defined charitable purposes
- acting only within their legal powers
- taking particular care in organising trading activities which may not be regarded as charitable
- managing and protecting the property of the institution
- (for those institutions which are registered charities) responding to the requirements of the Charities Commission for information and returns.

3 The Framework of Governance of Higher Education Institutions

3.1 The following section outlines the structure of governance for the pre-1992 universities and for the post-1992 universities and colleges. However, although these structures can be described in general terms, there are considerable differences at institutional level in terms of detailed arrangements, particularly for the pre-1992 universities and church colleges. Members of governing bodies should therefore refer to the secretary to the governing body for more detailed information about their particular institution.

Structure of Governance

The Pre-1992 Universities (England, Wales and Northern Ireland)

Council

3.2 The council is the executive governing body of the university. It is responsible for the university's finances and investments and for the management of the university estate and buildings. It has authority to make contracts on behalf of the university and to enter into loans and mortgage agreements. In many cases it also has responsibility for the oversight of teaching and research. University statutes will normally state that, subject to the powers of the senate in academic matters, the council has responsibility for the conduct of all the affairs of the university. The council will carry out many of its functions through committees: in particular it will often have, jointly with the senate, a resources or strategy committee which is responsible for planning the development of the university, bringing together academic priorities, financial considerations and building needs.

3.3 It is an important principle that the council has a lay majority, that is a majority of members who are not staff or students of the university. Its membership is specified in the statutes by class of appointment and will typically include officers of the university, both lay and academic, members appointed by the court, members appointed by the senate, co-opted members, local authority representatives, elected staff members and student representatives.

3.4 Following the report of the National Committee of Inquiry into Higher Education (the Dearing Report) universities have undertaken reviews of the size of their governing bodies with a view to reducing them. The average size of councils in England, Wales and Northern Ireland is now around 33 members.

(Further information: CUC Review of University Governance 1997-2000 – see Bibliography Annex L.)

3.5 Councils normally meet between three and six times a year. A great deal of council business will be conducted through committees concerned with finance, property and capital development, or through joint committees of the council and the senate concerned with university strategy, resource allocation or employment, with the committees bringing forward recommendations for the council's approval. As a result of carrying out effectiveness reviews of how they conduct their business, many councils are seeking to organise their agendas in such a way as to give more time to the consideration of issues which are of major strategic significance to the institution.

Senate

3.6 The senate is responsible for regulating and directing the academic work of the university. In some cases, the statutes state that power in academic matters (for example the awarding of degrees) rests with the senate; but even where the statutes do not make explicit legislative reference to the fact, the senate is regarded as the supreme authority on purely academic matters. Constitutionally, the senate reports to the council. Decisions of the senate on academic matters which have financial or resource implications are subject to approval by the council. Conversely, decisions by the council which have academic implications (for example the creation or closure of an academic department) are subject to consultation with the senate, and the senate would normally be the initiating body in such matters.

3.7 The senate is chaired by the vice-chancellor. Unlike the council and the court, its membership is drawn from within the university except where representation is accorded to external institutions for academic purposes. It consists of academic staff, with the proportion of staff in the various grades (professorial, non-professorial, research etc) varying between universities. Student representatives are also included. Senates vary in size from under 50 to well over 100 members. The senate's specific responsibilities normally include:

- academic strategy
- promotion of research
- approval of content of curriculum and new programmes
- academic standards
- procedures for the award of qualifications
- appointment of internal and external examiners
- policies and procedures on examinations
- criteria for admission
- student discipline.

The Court

3.8 The court has a formal role and does not take part in the day-to-day oversight of the university's affairs or in the decision-taking process. It offers a means whereby the wider interests served by the university can be associated with the institution, and it provides a public forum where members of court can raise any matters about the university.

3.9 The court is typically a large body. Although it can range in size from around 50 to more than 400, the typical size is in the region of 200; newer universities tend to have smaller courts. Its constitution is specified in the university's statutes, and it typically includes

representatives of local authorities; MPs; representatives of other universities, colleges, schools and the professions; members of the council and university officers; elected staff and students; and representatives and graduates of the university.

3.10 The court is required by statute to meet at least once a year.

3.11 Its powers vary between institutions, but typically include the following:

- consideration of the annual report of the university
- receiving the annual accounts
- (in most, but not all, cases) appointing the chancellor.

3.12 University charters make clear that the court has a largely formal status within a university's governance structure. However it performs an important public role through its large and varied membership. Each year it considers a university's annual report which ensures that a university's mission and achievements are communicated to a broadly representative group of lay people in a way that encourages them to ask questions and discuss the report.

Officers of the University

3.13 The statutes of the pre-1992 universities provide for a number of officers, including the following.

3.14 **Chancellor.** The chancellor is formally the lay head of the university and the chairman of the court. The role is largely ceremonial; for example, the chancellor presides at degree congregations.

3.15 **Pro-chancellor(s).** The pro-chancellor (or one of the pro-chancellors if there is more than one) will normally be the chairman of the council. He/she will be appointed to the post by the council from among its lay members.

3.16 **Treasurer.** The treasurer is also appointed by the council from among its lay members and is normally chairman of the university's finance committee.

3.17 **Vice-chancellor.** The statutes of many pre-1992 universities define the vice-chancellor as the chief academic and administrative officer of the university. He/she is, in effect, the chief executive of the university. The vice-chancellor has overall responsibility for the executive management of the institution and for its day-to-day direction, and is accountable to the council (and in some universities to the senate) for the exercise of these responsibilities. He/she is designated as the principal officer of the institution. As such, he/she is responsible for ensuring that the institution complies with the terms and conditions specified by the Funding Council for the use of Funding Council funds, and may be called to give evidence before the Public Accounts Committee. The vice-chancellor also chairs the senate.

3.18 **Pro-vice-chancellors.** Pro-vice-chancellors are appointed by the council for a fixed period of time, normally from among the professoriate. The pro-vice-chancellors assist the vice-chancellor, but will normally continue to carry out some academic duties within the department.

3.19 **Registrar.** The registrar is the most senior member of the administrative staff and will normally be designated in the statutes as secretary or clerk to the council and the senate and other statutory bodies (the role of the registrar as secretary to the council is described in paragraphs 4.14-4.17). The registrar will be answerable to the vice-chancellor for his or her administrative responsibilities. In some universities, all the administrative officers such as the bursar, finance officer, estates officer and academic registrar report to the registrar. In others, some of these officers report directly to the vice-chancellor.

Membership of the University

3.20 In the pre-1992 universities, the statutes state that the following are members of the university and therefore comprise the corporate body of the university:

- lay members of the court
- lay members of the council
- academic staff
- such other members of staff as may be designated by the council
- graduates
- students.

This broad definition of membership is reflected in the participative framework of governance prescribed in the pre-1992 universities.

The Visitor

3.21 Most pre-1992 universities have a Visitor. The office is usually referred to specifically in the charter and statutes, stipulating who is to hold the office, but if the charter and statutes are silent, then the Visitor is the Crown. The Crown has various legal manifestations (such as the Queen-in-Council, the Sovereign acting through the Lord President of the Council, or simply the Queen), and the procedures to be adopted will vary according to which formulation it is. Other Visitors may, for example, be judicial or ecclesiastical office holders.

3.22 The main role of the Visitor is to determine complaints on the petition of a member of the university after other formal, internal mechanisms have been exhausted. The Visitor's jurisdiction is laid down by common law and Act of Parliament. The jurisdiction no longer extends to employment matters; but where there is jurisdiction it is exclusive, that is the ordinary courts have no jurisdiction (except by way of judicial review if the Visitor acts

unlawfully). The passage of the Human Rights Act in October 2000 has raised questions about the operation of the Visitor system. These are referred to under paragraphs 6.12 and 7.13.

Post-1992 Universities and Colleges of Higher Education (England and Wales)

3.23 Each institution formerly funded by the PCFC or Welsh LEAs operates under articles of government which have been approved by the Privy Council.

Board of Governors

3.24 The articles state that the board of governors shall be responsible for:

- the determination of the educational character and mission of the institution and for oversight of its activities
- the effective and efficient uses of its resources, the solvency of the institution and safeguarding its assets
- approving annual estimates of income and expenditure
- the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the head of the institution, the clerk to the board of governors and such other senior post-holders as the board of governors may determine
- setting a framework for the pay and conditions of service of all other staff
- the appointment of external auditors.

3.25 The 1992 Further and Higher Education Act and the instruments of government state that the board of governors shall consist of not fewer than 12 and not more than 24 members (plus the head of the institution unless he/she chooses otherwise). Of the appointed members:

- up to 13 must be independent members, namely people appearing to the appointing authority to have experience of, and to have shown capacity in, industrial, commercial or employment matters or the practice of any profession, and who are not members of staff or students of the institution or an elected member of the local authority
- up to two may be teachers of the institution, nominated by the academic board, and up to two may be students of the institution, nominated by the students
- at least one and not more than nine shall be co-opted members, nominated by the members of the board of governors who are not co-opted members.

3.26 The co-opted membership may include members of staff, whether teachers or not, and at least one of the co-opted members must have experience in the provision of education.

Elected members of any local authority are excluded from membership of the board of governors, other than as co-opted members.

3.27 Subject to the above maxima and minima, the board of governors itself can determine the number of members in each variable category, but must ensure that at least half of all members of the board are independent members.

3.28 Boards normally meet between three and six times a year. A great deal of board business may be dealt with through committees such as a finance and employment committee. As a result of carrying out effectiveness reviews of how they conduct their business, many boards are seeking to organise their agendas in such a way as to give more time to the issues which are of major significance to the institution.

Academic Board

3.29 The academic board is responsible for academic affairs, including academic standards, research, scholarship, teaching and courses at the institution, and for considering the development of the academic activities of the institution, subject to the overall responsibilities of the governing body and the head of the institution.

3.30 Where the power to award degrees exists (as it does for all post-1992 universities and some higher education colleges), it is provided under the Further and Higher Education Act 1992 which specified that this power should rest with the board of governors. The academic board's responsibility for the administration of any awards is therefore by virtue of delegation from the board of governors.

3.31 The articles specify that the academic board should normally consist of not more than 30 members, although exceptionally membership of up to 40 may be permitted. Additionally, the articles state that individuals in senior management positions (ie deputy and assistant principals, deans of faculty or equivalent, heads of schools and departments) must make up at least 50 per cent of the membership.

Officers

3.32 The articles of government of the post-1992 universities and colleges make provision for each institution to designate and appoint to senior posts, which must include those of the principal and the clerk to the board of governors. A brief description of senior positions follows.

3.33 **Chancellor** – some of the post-1992 universities have appointed chancellors who carry out ceremonial functions – for example, conferring degrees at degree congregations.

3.34 **Chairman of the board of governors** – in the post-1992 universities and other higher education corporations, the chairman of the board of governors is appointed by the board from among its independent members.

3.35 **Head of the institution** – subject to the responsibilities of the board of governors, the head of the institution is the chief executive of the institution, and is responsible for:

- making proposals to the board of governors about the educational character and mission of the institution, and for implementing the decisions of the board of governors
- the organisation, direction and management of the institution and leadership of the staff
- the appointment, assignment, grading, appraisal, suspension, dismissal, and determination – within the framework set by the board of governors – of the pay and conditions of service of staff other than the holders of senior posts
- the determination, after consultation with the academic board, of the institution's academic activities, and for the determination of its other activities
- preparing annual estimates of income and expenditure, for consideration by the board of governors, and for the management of budget and resources, within estimates approved by the board of governors
- the maintenance of student discipline and, within the rules and procedures provided within the articles, for the suspension or expulsion of students on disciplinary grounds and for implementing decisions to expel students for academic reasons.

3.36 **Deputy (or deputies) to the head of the institution** – the deputy (or deputies) to the head of the institution assist the head of the institution and have specific management responsibilities. In some institutions they are appointed on a permanent basis and in others for a fixed term. They may be responsible for providing leadership in academic or related functions. In some instances they may be designated as pro-vice-chancellors.

3.37 **Secretary (or clerk) to the board of governors** – the secretary or clerk to the board normally has other management responsibilities within the institution. Some are designated as secretary or registrar, and some are designated as a deputy or pro-vice-chancellor.

Membership of the Institution

3.38 Most of the institutions formerly funded by the PCFC were incorporated under the Education Reform Act 1988 as higher education corporations. Membership of the corporation in these institutions is identical with membership of the board of governors.

4 Conduct of Governing Body Business

Proper Conduct of Public Business

4.1 Governing bodies are entrusted with public funds and therefore have a particular duty to fulfil the highest standards of corporate governance at all times, and to ensure that they are discharging their duties with due regard for the proper conduct of public business. Institutions of higher education were included among the public spending bodies examined by the Committee on Standards in Public Life, and consequently members of governing bodies should observe the Seven Principles of Public Life drawn up by the committee. These principles are as follows:

- **Selflessness.** Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their families or their friends
- **Integrity.** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties
- **Objectivity.** In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit
- **Accountability.** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office
- **Openness.** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands
- **Honesty.** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest
- **Leadership.** Holders of public office should promote and support these principles by leadership and example.

4.2 Attention is also drawn to the House of Commons Public Accounts Committee's Report on the Proper Conduct of Public Business (8th Report, January 1994).

4.3 This section outlines the general rules and conventions for the conduct of the business of governing bodies of higher education institutions, and particularly those features which assist with compliance with the principles mentioned above. Members of governing bodies of church colleges are likely to have additional responsibilities not covered in this Guide, relating to their institution's providing body and in their capacity as trustees.

Procedural Matters

4.4 The governing body must meet regularly and at reasonably frequent intervals. The agenda and supporting papers should be circulated in advance and the decisions minuted.

4.5 Certain items may be declared to be 'reserved', that is business which for reasons of confidentiality is not open to discussion by the whole governing body.

4.6 In order to function efficiently, the governing body must have rules for the conduct of its meetings. Issues for which rules are required include, but are not restricted to: procedures for voting, rescinding decisions, calling extraordinary meetings, and declaring business reserved; requirements for a quorum; and the frequency of meetings. The rules governing some of these issues are specified in the statutes of pre-1992 universities or the articles of post-1992 universities and colleges. The institution should draw up standing orders to regulate those aspects of the conduct of governing body business which are not already prescribed by the statutes or articles. Additionally, the institution's standing orders can usefully reiterate the relevant provisions of the statutes or articles in order to consolidate all the material for ease of reference.

4.7 Members of governing bodies should refer to their secretary for further information about the rules applying in their own institutions.

Corporate Decision Making

4.8 The governing body should exercise its responsibilities in a corporate manner; that is to say, decisions should be taken collectively by the members acting as a body. Members should not act individually or in informal groupings to take decisions on governing body business on an ad hoc basis outside the constitutional framework of the meetings of the governing body and its committees.

Role of the Chairman

4.9 The chairman is responsible for the leadership of the governing body. As chairman of its meetings he/she should promote its well being and efficient operation, ensuring that its members work together effectively and have confidence in the procedures laid down for the conduct of business. A chairman should take particular care that the governing body observes the Seven Principles of Public Life (see paragraph 4.1), and that committees which play a central role in the proper conduct of the governing body's business report appropriately to the governing body. The chairman should also ultimately be responsible for ensuring that the governing body operates effectively, discusses those issues which it needs to discuss, and dispatches its responsibilities in a business-like way.

4.10 Through leadership of the governing body, the chairman plays a key role in the business of the institution, but should take care not to be drawn into the day-to-day executive management. For the governing body to be effective, there must be a constructive working relationship between the chairman and the executive head of the institution. This relationship will depend on the personalities involved, but recent reports by the National Audit Office have

emphasised the need for both sides to recognise that the roles of chairman and executive head are formally distinct. The relationship should be mutually supportive, but must also incorporate the checks and balances imposed by the different roles each has within an institution's constitution.

4.11 Lay or independent members of the governing body should also take care not to become involved in the day-to-day executive management of the institution. This also applies to the staff and student members of a governing body, except that in the course of their employment or in their activities as students, they may have executive responsibilities of some kind within the institution.

Role of the Executive Head of the Institution in Relation to the Governing Body

4.12 The governing body is responsible for determining the overall strategic direction of the institution. It establishes the budgetary framework, appoints the head of the institution (in conjunction with the senate in pre-1992 universities) and exercises general oversight over the institution's performance and development. The head of the institution is responsible (subject to the powers of the senate in the pre-1992 universities) for the executive management of the institution and its day-to-day direction. The executive head should not seek to determine matters reserved for the governing body.

4.13 The specific responsibilities of the head of the institution in relation to governing body business include:

- implementing the decisions of the governing body or ensuring that they are implemented through the relevant part of the institution's management structure
- initiating discussion and consultation including, where appropriate, consultation with the staff and the academic board/senate on proposals concerning the institution's future development, and ensuring that such proposals are presented to the governing body
- fulfilling the duty, as the officer designated by the governing body under the terms of the Funding Council's Financial Memorandum (see paragraph 4.14), to alert the governing body if any actions or policy under consideration would be incompatible with the terms of the Financial Memorandum. If the governing body nevertheless decides to proceed, then the head of institution has a duty to inform the Chief Executive of the Funding Council, or the Permanent Secretary of the Department of Higher and Further Education, Training and Employment (DHFETE) in Northern Ireland (formerly DENI).

Role of the Secretary to the Governing Body

4.14 The secretary has a key role to play in the operation and conduct of the governing body, and in ensuring that appropriate procedures are followed:

- The secretary or clerk to the governing body should be appointed to that post by the governing body.

- It is normally the case that the secretary combines this function with a senior administrative or managerial role within the institution. The institution and the secretary must exercise great care in maintaining a separation of the two functions. Irrespective of any other duties that the secretary may have within the institution, when dealing with governing body business the secretary will act on the instructions of the governing body itself.
- In his/her role as secretary, the secretary should be solely responsible to the governing body and should therefore have a direct reporting link to the chairman of the governing body for the conduct of governing body business (ie agendas, papers, minutes etc).
- The chairman and members of the governing body should look to the secretary for guidance about their responsibilities under the charter, statutes, articles, ordinances and regulations to which they are subject, including legislation and the requirements of the Funding Council, and on how these responsibilities should be discharged. It is the responsibility of the secretary to alert the governing body if he/she believes that any proposed action would exceed the governing body's powers or be contrary to legislation or to the Funding Council's Financial Memorandum. (Note: the vice-chancellor, as the officer designated by the governing body under the terms of the Funding Council's Financial Memorandum, is formally responsible for alerting the governing body if any action or policy is incompatible with the terms of the Financial Memorandum – see paragraph 4.13 – but this cannot absolve the secretary from having this responsibility as well).
- The secretary should be solely responsible for providing legal advice to or obtaining it for the governing body, and advising it on all matters of procedure.
- The secretary should advise the chairman in respect to any matters where conflict, potential or real, may occur between the governing body and the chief executive.

4.15 It is incumbent on the governing body to safeguard the secretary's ability to carry out these responsibilities. It is important that the secretary also both consults and keeps the vice-chancellor fully informed on any matter relating to governing body business (other than in relation to the Remuneration Committee's consideration of the vice-chancellor's emoluments). It is good practice for the chairman of the governing body, the vice-chancellor and the secretary to the governing body to work closely together within the legal framework provided by the charter, statutes or articles of government and the ordinances and regulations laid down by the institution and the Funding Councils' Financial Memorandum. Some NAO reports have suggested that in some institutions this has not been possible because of inappropriate conduct by one of the parties involved.

4.16 If there is a conflict of interest, actual or potential, on any particular matter, between the secretary's administrative or managerial responsibilities within the institution and his/her responsibilities as a secretary to the governing body it is the responsibility of the secretary to draw it to the attention of the governing body. If the governing body believes that it has identified such a conflict of interest itself the chairman should seek advice from the vice-chancellor, but must offer the secretary an opportunity to respond to any such question.

4.17 Further guidance on the role of secretaries to governing bodies is provided in the following publications:

- *The Guide for Clerks to Governors of Higher Education Corporations*, published by the Higher Education Funding Council for Wales
- *The Guide for Clerks to Further Education Corporations*, published by the Further Education Funding Council for England and issued in a revised edition for Wales by the Welsh Office and the Further Education Funding Council for Wales.

Matters Concerning Members of the Governing Body

4.18 It is central to the proper conduct of public business that chairs and members of governing bodies should act and be perceived to act impartially, and not be influenced in their role as governors by social or business relationships. A member of a governing body who has a pecuniary, family or other personal interest in any matter under discussion at any meeting of the governing body or one of its committees at which he/she is present shall as soon as practicable disclose the fact of his/her interest to the meeting and shall withdraw from that part of the meeting. A member of the governing body is not, however, considered to have a pecuniary interest in matters under discussion merely because he/she is a member of staff or a student of the institution. Nor does the restriction of involvement in matters of direct personal or pecuniary interest prevent members of the governing body from considering and voting on proposals to insure the governing body against liabilities which it might incur.

4.19 Institutions should have a register of interests of members of the governing body. The register should be publicly available and should be kept up to date.

Members as Representatives

4.20 Members nominated by particular constituencies should not act as if delegated by the group they represent. No member may be bound, when speaking or voting, by mandates given to him/her by others, except when acting under approved arrangements as a proxy for another member of the governing body.

Induction and Development

4.21 Members of the governing body, when taking up office, should be fully briefed on the terms of their appointment and be made aware of the responsibilities placed on them for the proper management of the institution. They should receive copies of relevant background documents at the time of their appointment. These could include, for example, a copy of this Guide; the institution's annual report, financial statements, and financial forecast; the overall strategic plan, and strategy documents covering areas such as learning and teaching, research, widening participation and estates; notes describing the institution's organisational structure; and the rules and procedures of the governing body. It is also important for governing bodies to provide an induction or briefing session for new members, in order to explain their responsibilities, the function of the governing body and other organisations within HE, and the strategic objectives of the institution.

4.22 Following initial induction, members should regularly receive copies of both the institution's newsletter and the CUC's Newsletter, which is published three times a year, and appropriate publicity material about the institution to help them stay up-to-date with developments. There is an onus on members to keep themselves informed.

4.23 The CUC provides a governor development programme. This includes an induction seminar for new members of governing bodies which is intended to supplement and follow on from institutions' own induction arrangements. Institutions are strongly encouraged to nominate new members to attend. A full timetable for the governor development programme is issued at the beginning of each academic year.

Expenses

4.24 The governing body has no power to remunerate its members, but it may pay such travelling, subsistence or other allowances as it may determine.

Personal Liability

4.25 The law relating to the personal liabilities of members of governing bodies is complex and its interpretation is ultimately a matter for the courts. This Guide does not therefore attempt a statement of the law, but offers some general guidance on conduct, to avoid actions which could involve a personal liability. Members of governing bodies should satisfy themselves that they understand their own position in their particular institution, and should:

- act honestly, diligently and in good faith
- be satisfied that the course of action proposed is in accordance with the institution's statutes or instruments and articles of government
- not bind the institution to a course of action which it cannot carry out
- seek to ensure that the institution does not continue to operate if it is insolvent
- seek to persuade colleagues by open debate, and register dissent if they are concerned that the action would be contrary to any of the above
- avoid putting themselves in a situation where there is actual or potential conflict between their interests and those of the institution.

4.26 If this advice is followed it is unlikely that personal liability could arise, particularly since the powers and responsibilities of governing bodies are exercised in a collective manner and decisions are made by formal resolution. Moreover, the higher education institution is a separate legal entity, distinct from its members or officers. However, claims may be made in relation to the collective decisions and actions of the governing body. The Funding Councils have drawn the attention of governing bodies to the desirability of taking out insurance against the costs of any claims of negligence that may be made against members of the governing body in carrying out their duties. Institutions have been given details of brokers who are able to offer appropriate schemes.

Strategic Planning

4.27 The governing body will rely on the executive head of the institution to be responsible for the operational management of the institution, and to offer guidance to the governing body on issues coming before it. However, the governing body will have a particular concern for the strategic development of the institution. It should consider and approve the institution's strategic plan, which influences and guides all decisions coming before the governing body. It should also approve an annual operating plan which identifies those aspects of the strategic plan being implemented in the year in question.

4.28 Strategic plans play an important role in informing the relationship between institutions and the Funding Councils.

4.29 The HEFCE asks institutions to provide a copy of their strategic or corporate plan on an agreed three year cycle. The expectation is that the plan looks forward five to ten years or more, setting out the institution's key strategic aims and objectives, and integrates the main areas of institutional activity. As such a plan might cover:

- the mission or vision
- external and internal factors likely to impact on the institution and how the strategy responds to these
- the current strategic position of the institution
- long-term aims
- principal objectives
- financial strategy
- main proposals for implementation and associated targets.

4.30 Good practice guidance is offered in *Strategic planning in higher education: a guide for heads of institutions, senior managers and members of governing bodies* (HEFCE 00/24). This contains an annex specifically on the role of the governing body in relation to strategic planning.

4.31 The HEFCE also asks each HEI for an annual operating statement which summarises its current position and strategic priorities, and provides an assessment of progress against a range of objectives.

4.32 The Funding Councils have adopted the guidance produced by the Turnbull Committee, which recommends a risk-based approach to internal control. The HEFCE is issuing guidance to the HE sector which will assist governors and managers in implementing risk management in their institutions. HEFCE's Accounts Direction for 2000-01 provides for a transitional timetable for compliance with the principles of corporate governance, including risk management, to be achieved by the year ending 31 July 2003.

Delegation

4.33 Where permissible, the governing body may delegate some of its work to committees, grant delegated authority to the chairman to act on its behalf, and delegate responsibility to the

executive head and officers of the institution. Such delegations must be clearly defined in writing. Having delegated authority to other bodies or individuals to act on its behalf, the governing body is nevertheless still ultimately accountable and has to accept corporate responsibility for the actions taken.

Delegation to the Chairman

4.34 The governing body may grant delegated authority to the chairman to act on its behalf between meetings. Policy on this matter should be defined in the governing body's standing orders. Action taken under delegated authority will normally consist of routine business which would not have merited discussion at a governing body meeting (such as the signing of routine documents, and detailed implementation of matters already agreed by the governing body).

4.35 Occasionally, matters may arise which are judged too urgent and important to await the next meeting of the governing body. The chairman then has the option of calling a special meeting, consulting the members of the governing body by correspondence, or dealing with the matter by chairman's action. The chairman should be careful not to take decisions by chairman's action where it is inappropriate to do so, and not to exceed the scope of the delegated authority granted by the governing body. Chairman's action on matters of importance should only be taken where delaying a decision would disadvantage the institution.

4.36 The chairman is answerable to the governing body for any action which he/she takes on its behalf. Where chairman's action is taken, a written report should be made to the next meeting of the governing body.

Delegation to Committees and Retention of Key Functions

4.37 It is common practice for the governing body to delegate some of its work to committees such as a planning and resources committee, or finance and general purposes committee. In deciding which tasks should be delegated to committees, the governing body should retain a formal schedule of matters reserved to it for its collective decision. Such matters are likely to include final decisions on issues of corporate strategy, such as those identified in paragraph 4.29 above, and the review and approval of the institution's financial forecasts and financial statements.

4.38 The articles of all institutions previously funded by the PCFC or Welsh LEAs list key areas which the governing body may not delegate to committees. They also state that the governing body must establish committees on employment policy and finance (without delegating to them the essential decision-making functions in these areas).

4.39 All committees must be provided with a clear remit and written terms of reference, clearly stating the extent and limits of the committee's responsibilities and authority. Committees must take care not to exceed their terms of reference and should be so advised by the secretary to the governing body. Committees should distinguish between issues on which they are empowered to take decisions, and issues which they must remit to the governing body for decision. Where a committee is acting under delegated powers it should submit regular written reports to the governing body on decisions which it has taken on the governing body's behalf.

4.40 Membership of committees provides a particular opportunity for members of the governing body to contribute their expertise to the institution.

Committees and the Proper Conduct of Public Business

4.41 There are three committees which should play a central role in supporting the proper conduct of the governing body's business: an audit committee, a remuneration committee and a nominations committee.

Audit Committee

4.42 The role of the audit committee is covered in Section 5.

Remuneration Committee

4.43 Governing bodies should establish a remuneration committee to determine and review the salaries, terms and conditions (and, where appropriate, severance payments) of the head of the institution and such other members of staff as the governing body deems appropriate. A minimum membership of such a committee should be the chairman of the governing body and at least three other lay/independent members, including the lay treasurer if such an office exists. The head of the institution should also be a member of the committee for all salaries except his/her own. Any member of staff should withdraw from the committee when his/her own salary, terms and conditions or severance payments are under consideration.

4.44 The remuneration committee should seek comparative information on salaries and other benefits and conditions of service in the higher education sector. Two sources of information are available: the CUC has a database of salaries, benefits and conditions of service for heads of institution (currently available only to chairmen of governing bodies); and the Universities and Colleges Employers' Association (UCEA) collects data on the salaries of other highly-graded staff.

4.45 When considering severance arrangements for senior staff, the remuneration committee must represent the public interest and avoid any inappropriate use of public funds. The committee should be careful not to agree to a severance package which staff, students and the public might deem excessive. Contracts of employment for senior staff should specify periods of notice of not more than 12 months, and should not provide for pension enhancements. The Funding Councils issued guidance to institutions on good practice in relation to severance agreements in Circular Letter 7/97 (available on the HEFCE web-site).

Nominations Committee

4.46 Governing bodies should establish a nominations committee to seek out and recommend new lay/independent co-opted members to the appointing body. The nominations committee should be chaired by the chairman of the governing body, and should include at least three lay/independent/co-opted members of the governing body, the head of the institution and at least one senior member of the academic staff.

4.47 Vacancies for lay/independent members and co-opted members should be publicised, and staff and students as well as members of the governing body should be invited to submit names to the clerk of the governing body for transmission to the nominations committee. This will ensure that a wide trawl for names is achieved. However, in making its report to the governing body, the nominations committee must pay regard to the balance of membership and the needs of the institution. The question of the inclusion of appropriate members of the local community should also be addressed. In the pre-1992 universities the nominations committee's recommendations should be approved by the whole governing body. In the institutions formerly funded by the PCFC or Welsh LEAs, decisions on the appointment of independent members must be approved by the independent members, but the whole governing body should discuss the nomination committee's reports before the independent members take their decision.

Rotation of Members

4.48 Continuity of membership, particularly of key members, is often important to an institution, but so is the need for new blood. Lay/independent members should be appointed for a given term, which should be renewable. In some pre-1992 universities, the period of the appointment is laid down in the statutes, but more often it is either left to the ordinances or not prescribed at all. The renewal of any appointment should not be automatic, but should be recommended by the nominations committee as part of its report on filling vacancies. In normal circumstances, continuous service beyond three terms of three years or two of four is not desirable (although exceptions may be permitted). After this point members should normally retire so that the governing body can appoint new people. There should be no bar to a particularly valued member returning if a vacancy occurs in future years. An upper age limit of 70 for re-appointment should be considered as good practice, but could be the subject of special dispensation by the governing body. Where a member is elected chairman of the governing body or to some other statutory office such as pro-chancellor or treasurer, he/she would automatically begin a new term of membership linked to the office.

4.49 The re-appointment or replacement of the chairman of the governing body should be considered carefully and in good time during the term of the appointment. There are variations of practice in the length of term for which the chairman is normally appointed. However, the re-appointment of a chairman beyond two terms of four years, or the equivalent, should be regarded as exceptional.

Representation of Staff and Students on Governing Bodies

4.50 The statutes of the pre-1992 universities normally provide for membership of the governing body by representatives of the academic staff and students (and in some cases non-academic staff); this is integral to the nature of governance in those institutions. In institutions formerly funded by the PCFC or Welsh LEAs these categories of members can be excluded by decision of the governing body. However, the representation of staff and students on the governing body is important in all institutions, and it is strongly recommended that governing bodies should not exercise their power to exclude such members. If, nevertheless, a governing body does decide to exclude them, it should record formally in its minutes the grounds for its decision, and should publish these grounds within the institution

and inform the Funding Council.

Principles of Openness and Transparency in the Operation of Governing Bodies

4.51 The general principle applies that students and staff of the institution should have access to information about the proceedings of the governing body. The agenda, draft minutes if cleared by the chairman, and the signed minutes of governing body meetings, together with the papers considered at meetings, should generally be available for inspection by staff and students. There may, however, be matters covered in standing orders where it is necessary to observe confidentiality. Such matters are likely to concern individuals or have a 'commercial' sensitivity. Good practice for all institutions might include placing copies of the governing body's minutes in the library, reporting on decisions in a newsletter, and ensuring that the annual report and accounts are circulated to academic departments and the students' union.

4.52 The institution's annual report and financial statements should be made widely available outside the institution, and ways should be found for the public, or the local community, to comment on matters to do with the institution that concern them.

4.53 Institutions should consider what is the appropriate means to put this into effect. The statutes of most pre-1992 universities include provision for a court, with a wide membership drawn on a representative basis from external bodies, whose terms of reference meet these criteria. Some of the post-1992 universities, whose articles do not provide for a court, have nevertheless decided to establish representative bodies which have a broadly similar function. In any event, institutions should ensure that machinery exists whereby they maintain a dialogue with appropriate organisations in their communities.

4.54 The Second Report of the Committee on Standards in Public Life stated that institutions should publish key information to a common standard, including material on governance, in their annual reports. The following good practice is recommended:

- financial statements (annual accounts) should include a statement which covers the responsibilities of the governing body in relation to financial management and the financial aspects of corporate governance. A model is included in the specimen financial statements attached to the Statement of Recommended Practice (SORP) on Accounting in Higher Education Institutions, which was published by Universities UK (formerly the CVCP), Universities Scotland (formerly COSHEP), and SCOP in 2000. The model will require adjustment to reflect the internal structures of individual institutions, but should otherwise be followed
- the annual report should also include a corporate governance statement which sets out the institution's legal status and broad constitutional arrangements, recognises the Seven Principles of Public Life and indicates how they are implemented (see paragraph 4.1), and takes account of the wide range of constituencies to which the institution reports. Model statements for both the pre-1992 universities and the post-1992 universities and colleges are included at Annex J of this Guide. These are intended as indicators of good practice, and will require adjustment to reflect the particular circumstances of individual institutions.

Review of the Effectiveness of the Governing Body and the Institution

4.55 The governing body will be assisted in the discharge of its responsibilities if it has a clear and accurate understanding of the institution's overall performance. It is recommended that governing bodies should review both their own effectiveness and the institution's performance at regular intervals. Any such review of performance should take into account the views of the senate or academic board, and should be reported upon appropriately within the institution and outside. The CUC has provided a composite checklist of possible review points in Annex 5 of the Progress Report of its Working Party on the Effectiveness of University Governing Bodies. The CUC's *Review of University Governance 1997-2000* reports on the conduct of university efficiency reviews and on these findings (see Bibliography Annex L). Since it is likely that the Funding Councils may seek information on the reviews of governing bodies' effectiveness, some written report on this at the conclusion of the review may be desirable. Institutions are advised that the reviews of their own performance should most appropriately be reported in their annual report, or in whatever equivalent report they produce for general external circulation.

5 The Regulation of Financial Affairs

Internal Financial Control Mechanisms

5.1 Institutions need to ensure that they have a sound system of internal financial control, which includes the management of risk. Essential elements of such a control system are:

- effective review by lay members
- managerial control systems which include defining policies, setting objectives and plans, identifying key risks and opportunities, and monitoring financial and other performance
- financial and operational control systems and procedures, which include physical safeguards for assets, segregation of duties, authorisation and approval procedures and information systems
- an effective internal audit function
- an effective system for the identification and management of risk.

5.2 In formal terms, internal financial control is usually exercised through a committee system. The governing body has overall responsibility for institutional activities and finances. Many institutions have established a planning and resources committee to consider strategic plans and the allocation of resources to meet such plans. Detailed monitoring of the financial position and financial control systems is normally the responsibility of a finance committee or equivalent.

5.3 The Accounts Direction from the Funding Councils requires institutions to include a statement in the corporate governance section of their annual financial statements, confirming that they have reviewed the effectiveness of the internal control system.

5.4 In practice, day-to-day financial control is exercised by officers of the institution. Many pre-1992 universities also have a lay treasurer (or equivalent), often someone with a financial background, who has a constitutional role in presenting financial statements and reports to the governing body. However, the practical responsibility for administering the finances and advising on financial matters usually falls to a professional full-time employee, generally designated as director of finance. That individual must have access to the head of the institution whenever he/she deems it appropriate.

5.5 The essential element of financial management is the annual budget. This is an income and expenditure plan which seeks to identify and quantify the revenue resources available to the institution, and to relate expenditure to strategic and operational plans and available income.

5.6 In conjunction with the revenue budget, a capital budget should also be prepared, prioritising approved building projects and identifying the funding sources and strategies needed to fund such projects.

5.7 Once budgets have been approved, it is important that heads of budgetary units are provided with regular financial information to help them manage resources for which they are accountable. Current trends are to devolve more resources to budgetary units, and to allow them flexible management and virement within prescribed parameters. However, such devolved budgetary arrangements require sound information systems to support them. The governing body should also receive summarised financial and management information, as and when it is needed to inform its decisions.

5.8 Institutions should have an internal manual of financial procedures and regulations. The manual should set out the role of committees, the responsibilities and limits of authority of senior staff, and details of the procedures and rules to be followed in the day-to-day financial transactions. There should also be clear policies on treasury management, investment management, risk management and insurance, debt collection and claiming of grants. These should be periodically reviewed to ensure that they are up-to-date.

5.9 Attention is drawn to the publication *Effective financial management in higher education: a guide for governors, heads of institutions and senior managers* (HEFCE 98/29), which offers guidance on the maintenance of robust procedures for financial management. The integration of financial management into wider planning is covered in the HEFCE guide to strategic planning (HEFCE 00/24).

Audit and the Audit Committee

5.10 While the responsibility for devising, developing and maintaining control systems lies with management, internal audit has a key role in providing a service to the institution and giving assurance on the adequacy and effectiveness of the internal control system. In addition to its role in ensuring probity, the internal audit service should also assist in ensuring value for money. Where an institution employs an external company to provide an internal audit service, the CUC recommends that care be taken to ensure that this company is fully separate from the company that provides the external audit service.

5.11 The Funding Councils require institutions to appoint an audit committee and provide for internal and external audit in accordance with the Audit Codes of Practice. These were revised and re-issued by the HEFCE in 1998 (HEFCE 98/28) and by HEFCW in 1999 (W99/34HE).

5.12 The audit committee should be a small, authoritative body which has the necessary financial expertise and the time to examine the institution's financial affairs more rigorously than the governing body as a whole. It should not confine itself to financial systems and details but should be prepared to take an independent stance, examine matters critically and be alert for potential areas of concern (including fraud and malpractice), which it should then bring to the attention of the governing body. The audit committee should also be in a position to form an opinion of the institution's arrangements to promote efficiency, economy and effectiveness, and to secure value for money in all areas. The committee is responsible for producing an annual report for the governing body.

5.13 The Funding Council's Audit Code of Practice specifies that the audit committee shall consist of at least three members of the governing body and that, in order to preserve their

independence, members of the audit committee must not have any executive responsibility for the day-to-day management of the institution. They should not serve on the institution's finance committee or planning and resources committee unless, exceptionally, the institution demonstrates that this is unavoidable for practical or statutory reasons, and obtains special permission from the Funding Council. At least one member of the committee should have a background in finance, accounting or auditing; the committee can co-opt members with particular expertise.

5.14 In summary, the specific responsibilities of members of the governing body in respect of audit are:

- to appoint the audit committee
- to consider, and where necessary, act on an annual report from the audit committee
- to consider and approve the strategic plan of the internal audit service (unless this is delegated to the audit committee)
- to appoint the external auditors (unless this function is delegated to the audit committee)
- to receive and approve the annual financial statements after they have been audited by the external auditors, and to forward the external auditors' management letter to the Funding Council.

Requirements of the Funding Councils

5.15 In addition to the requirement for an audit committee, the Funding Councils place a number of other requirements for financial accountability on institutions as a condition of funding. These requirements are set out in a Financial Memorandum issued to each institution. The main provisions are as follows:

- institutions must ensure that they have a sound system of internal financial management and control
- the governing body is responsible for ensuring that funds from the Funding Council are used only in accordance with:
 - the terms of the Financial Memorandum
 - the terms of the Further and Higher Education Act 1992 or, in the case of Northern Ireland, the Education and Libraries (NI) Order 1993. These specify that Funding Council funds must be spent only on the provision of education and the undertaking of research, or on facilities and activities which are required for these purposes
 - any other conditions which the Funding Council may from time to time prescribe
- the governing body must designate a principal officer of the institution who is responsible for satisfying the governing body that the institution is complying fully with the terms

relating to the use of Funding Council funds. The governing body invariably designates the executive head of the institution as the principal officer

- institutions must keep proper accounting records and submit audited financial statements to the Funding Council by 31 December following the end of the financial year. The financial statements must conform to the Funding Councils' Accounts Direction which is based on the Statement of Recommended Practice: Accounting in Further and Higher Education Institutions as accepted by the Accounting Standards Board
- institutions must ensure that the total income for the financial year will be sufficient to cover total expenditure, taking one year with another
- the Accounts Direction also requires that the annual financial statements must disclose: the total emoluments of the head of the institution; the number of staff paid more than £50,000 a year, listed in bands of £10,000; and any compensation in respect of loss of office paid to the head of the institution or to staff earning more than £50,000.

5.16 As a prerequisite of funding, the Funding Councils also require all institutions to demonstrate longer-term planning by submitting a full strategic plan on a three year cycle, and an annual operating statement, together with a number of strategic statements covering particular areas of activity supported through special funding.

5.17 The Funding Councils also specify procedures to be followed in relation to increasing thresholds for long-term and short-term borrowing, and the use by institutions of publicly funded assets as security for borrowing.

Procurement

5.18 The National Audit Office report, *Procurement in the English Higher Education Sector* (HC 437 Session 1998-99 27 May 1999) found that the sector had made substantial progress, since its 1993 report, in improving procurement practices, but that further savings could be achieved. The report included a number of recommendations to encourage further collaboration between institutions, improve performance measurement, and spread the use of procurement expertise and good practice within universities and colleges. It concluded that:

- although substantial savings had now been made, there was scope for further savings
- the key factors influencing the level of savings were the existence of formal procurement strategies and the employment of a specialist member of staff with responsibility for procurement.

5.19 All procurements should be undertaken on the basis of full and open competition so that the institution can be assured that it is securing the best that the market can provide at the most competitive price.

5.20

As noted in paragraph 4.18 above, it is essential that members of governing bodies guard against conflicts of interest. Particular areas of vulnerability are the invitation of tenders and the award of contracts. The institution should ensure that procedures are laid down for the

issue, receipt, opening and consideration of tenders, and for the award of contracts above a specified value. These procedures should establish whether members of the governing body or of the staff are to be involved at any particular stage or level; and should make specific provision to exclude from the process anyone (whether a member of the governing body or a member of staff) who might have a declarable interest in it. The procedures should be approved by the governing body, and should be included in the institution's internal manual of financial rules and procedures.

5.21 The institution's head of procurement should have access to the Register of Members' Interests so that he/she is aware of any connections which members of the governing body may have with potential suppliers.

5.22 Companies that do have a connection with a member of the governing body should not automatically be debarred from tendering for business from the institution. The exclusion of such companies might deprive the institution of a particularly valuable supplier, and could deter individuals with industrial or commercial interests from serving on governing bodies. However, in such circumstances:

- the member concerned should consider carefully how their involvement is likely to be perceived by the wider community; if in any doubt, they should consult the chairman
- if the procurement is discussed by the governing body, the member concerned should make a formal statement of their involvement with the company (supplementing the declaration already contained in the Register of Members' Interests) and should withdraw from the meeting for that item. This should be recorded in the minutes.

5.23 Members of the governing body should avoid becoming involved in procurement decisions on an informal basis (for example by providing ad hoc advice to an officer outside committee meetings). All contributions to the decision should be channelled formally through the committee system, so that they may be properly documented and open to wider scrutiny.

6 Staffing Matters

The Governing Body as Employer

6.1 In the pre-1992 universities, all appointments and contracts of employment are made on the authority of the council, even though in practice the council generally delegates these responsibilities. The institution is the legal employer.

6.2 In institutions formerly funded by the PCFC or the Welsh LEAs the articles specify that the board of governors is responsible for the appointment of the head of the institution, the clerk to the board of governors and such other senior post-holders as the board may determine. These staff together are referred to as 'senior post-holder' in this Guide. The articles also specify that the head of the institution is responsible for the appointment of all other staff.

6.3 In both the pre-1992 universities and the institutions formerly funded by the PCFC or the Welsh LEAs the governing body has responsibility for the institution's employment policy. This includes matters such as:

- ensuring that pay and conditions of employment are properly determined (see paragraph 6.4 below)
- ensuring that the institution complies with the requirements of employment law, including equal opportunity legislation and the provisions of the Disability Discrimination Act 1995
- ensuring that there are policies and procedures for appointments, promotion, staff development and appraisal.

Pay and Conditions of Service: the Universities and Colleges Employers Association

6.4 The Universities and Colleges Employers Association (UCEA) was established as an agency of Universities UK (formerly the CVCP), the CUC and SCOP to provide a single employers' organisation for the higher education sector. Its objectives are:

- to provide a framework within which representatives of institutions can discuss salaries, conditions of service, employee relations and all matters concerned with the employment of staff, including the negotiation of salaries, terms of service and employment-related matters on behalf of any institution
- to act as a consultant and adviser to institutions on employment matters.

6.5 Membership of UCEA is open to all UK higher education institutions and it is financed by subscriptions from member institutions. Its services are available only to subscribing members.

6.6 UCEA has a board of directors nominated by Universities UK, the CUC, SCOP and Universities Scotland.

6.7 Salary negotiations are undertaken at national level by UCEA on behalf of all categories of higher education institutions. Governing bodies are free to choose whether or not to implement the national agreements (subject, of course, to any contractual positions to the contrary). In the case of institutions formerly funded by the PCFC or the Welsh LEAs, the UCEA is also involved in national negotiations concerning conditions of employment of academic staff. It does not, however, perform this function for the pre-1992 universities because they determine conditions of employment for their own academic and academic-related staff at the institutional level.

Suspension and Dismissal of Staff

6.8 The statutes of the pre-1992 universities specify procedures covering the following:

- suspension or dismissal of academic staff for misconduct or other 'good cause'
- dismissal of academic staff for other reasons, including by reason of redundancy or incapacity
- dismissal of senior post-holders
- arrangements for academic staff to seek redress for any reasons relating to their employment.

Note: 'Academic staff' is defined in some institutions to include academic-related staff.

6.9 In the pre-1992 universities, the Education Reform Act 1988 introduced provision for the dismissal, by reason of redundancy, of academic staff appointed or promoted after November 1987. The governing bodies of these institutions are responsible for approving any policy of making redundancies among academic staff, whether across the institution as a whole or in specific subject areas, and for appointing a redundancy committee to select and recommend to the governing body the members of staff to be made redundant. The position in relation to the dismissal of academic staff appointed before November 1997 depends on the particular university's statutes, ordinances and contracts of employment. The governing bodies of pre-1992 universities are also responsible for appointing individuals or bodies (as specified in the articles or statutes) to hear disciplinary charges which could result in the dismissal of academic staff, and to hear appeals and grievances from academic staff.

6.10 The articles of government of HE colleges and post-1992 universities require the governing body to make rules relating to the conduct of staff (ie disciplinary procedures), to the suspension of staff and to grievance procedures. The articles also contain rights of appeal against suspension or dismissal.

Independent Review of Staff Grievances

6.11 The Second Report of the Committee on Standards in Public Life recommended that institutions should establish a system of independent review for all staff, to be invoked when internal avenues for resolving a staff grievance have been exhausted. In those pre-1992 universities which have a Visitor, this recommendation is partly met by the provision that

complaints, other than in employment matters, may be determined by the Visitor on petition from a member of the university. This provision does not, however, cover all categories of staff as normally only academic staff, and in some instances academic-related staff, are classified as members of the university.

6.12 The passage of the Human Rights Act in October 2000 has raised new questions about the need for independent review mechanisms including whether the Visitor system, as currently operated, fully meets the Act's requirements. This matter is still under consideration by Universities UK and – where the Visitorial powers are exercised on behalf of the Queen by the Privy Council or the Lord Chancellor's Department – by the respective officers of the Crown themselves. In the meantime, it is recommended that the availability of the Visitor to carry out an independent review should be widely publicised in institutions.

Whistleblowing

6.13 From time to time, a situation may arise where a member of staff has serious concerns about perceived irregularities in the running of the institution or the activities of colleagues within the institution. Such concerns might relate to, for example, financial malpractice, the abrogation of appropriate procedures, or departures from statutory or other requirements for good governance. All institutions should have appropriate channels through which staff can make such allegations (referred to as 'whistleblowing'). Provided that the allegation is made lawfully, without malice and in the public interest, the position within the institution of the individual making the allegation should not be jeopardised.

6.14 The CUC has issued guidance on whistleblowing, which sets out good practice in dealing with such allegations. A copy of this guidance is reproduced at Annex K. The Public Interest Disclosure Act introduced a new legal framework for 'protected disclosure'. It also amended existing employment legislation which specifically relates to the rights of the individual and the whistleblowing procedures.

Pensions

6.15 Academic and related staff in the pre-1992 universities are eligible to join the Universities Superannuation Scheme, to which employers' and employees' contributions are made as required. Arrangements for superannuation for other staff in pre-1992 universities may include a pension fund established and managed by the university itself. Members of governing bodies of pre-1992 universities should ensure that they understand what the university's superannuation arrangements are. In particular they should clarify whether or not they have a collective or individual role as trustees of any pension fund.

6.16 The HE colleges and post-1992 universities do not maintain their own pension funds, but make employers' contributions to the Teachers' Pension Scheme for academic staff, and in most cases the Local Government Pension Scheme for other staff.

6.17 The former inner London polytechnics make contributions to the London Pensions Fund Authority for non-academic staff.

7 Students

Students' Unions

7.1 The students' union of an institution has an important role in relation to the welfare of students and in promoting social and other activities. In recognition of that role the union receives income, normally in the form of a grant, from the institution's general fund.

7.2 The Education Act 1994, and comparable administrative arrangements in Northern Ireland, state that the governing body must take such steps as are reasonably practicable to secure that the students' union operates in a fair and democratic manner, and is accountable for its finances. The union is required to present audited financial statements to the governing body each year.

7.3 The Act also states that students have the right not to be a member of the union, and that any student who exercises this right should not be unfairly disadvantaged in the provision of services or other facilities. This does not apply in Northern Ireland.

7.4 The governing body is required to prepare a code of practice setting out how the provisions of the Education Act 1994 are to be implemented, and it must make arrangements to ensure that the code is brought to the attention of students once a year. The governing body is also required to ensure that students are made aware each year of their right to opt out of union membership, and to ensure that they are notified of any provisions which the institution may have made to offer such students services which are normally provided by the union.

7.5 The constitution of the students' union is subject to approval by the governing body, and to review by the governing body at intervals of not more than five years.

Freedom of Speech

7.6 Under the Education (No 2) Act 1986 and in accordance with the more recent Human Rights Act 1998 (Article 10 - the right to freedom of speech), the governing body has a duty to take such steps as are reasonably practicable to ensure freedom of speech within the law for students and members of staff of the institution and for visiting speakers. Governing bodies must also ensure that use of the institution's premises is not denied to any individual or body of people on the grounds of their beliefs, views, policies or objectives.

7.7 The 1986 Act requires governing bodies to maintain a code of practice setting out procedures for meetings held on the premises, and the conduct expected of those attending meetings.

7.8 The Education (No 2) Act does not apply in Northern Ireland, but governing bodies in Northern Ireland are required to make similar provisions.

Student Discipline

7.9 In the pre-1992 universities, rules and procedures concerning student discipline are normally prescribed in the university's ordinances, which must be approved by the governing body. Responsibility for overseeing the implementation of those procedures (both in cases which relate to academic matters, and in instances of misconduct) normally rests with the senate.

7.10 The articles of the institutions previously funded by the PCFC or Welsh LEAs state that responsibility for student disciplinary procedures relating to academic procedures rests with the academic board, although a student has the right to appeal to the governing body if he/she considers that these procedures have not been properly followed. The head of the institution is responsible for implementing the decisions of the academic board.

7.11 The articles of the institutions previously funded by the PCFC or Welsh LEAs also provide for the governing body, after consultation with the academic board and student representatives, to make rules relating to the suspension, exclusion or expulsion of students on disciplinary grounds. The head of the institution is empowered by the articles to implement these rules and he/she normally has authority to suspend, exclude or expel students for disciplinary reasons.

7.12 When considering disciplinary cases, institutions must take care to distinguish between offences which can properly be dealt with through internal disciplinary procedures, and criminal offences which are of such gravity that they should be dealt with by the police, at least in the first instance. The *Notes of Guidance on Student Disciplinary Procedures* (the Zellick Report) produced by the then CVCP (now Universities UK) provides advice in this area.

Student Appeals and Complaints

7.13 Institutions should ensure that, within the above framework, they have developed adequate and effective internal machinery for dealing with student appeals against academic and disciplinary decisions, and for handling student complaints against the institution. The Second Report of the Committee on Standards in Public Life recommended that all institutions should have arrangements for the independent review of student appeals and complaints once all internal avenues have been exhausted. In the case of those pre-1992 universities which have a Visitor, this recommendation is partially addressed by the provision for the Visitor to determine complaints on petition from a member of the student body. However, the passage of the Human Rights Act in October 2000 has raised new questions about the need for independent review mechanisms, including whether the Visitor system, as currently operated, fully meets the Act's requirements. It is anticipated that guidance on these questions will be issued in 2001.

Disability Discrimination Act

7.14 Under the terms of the Disability Discrimination Act 1995 institutions of higher education in England and Wales are required to publish, and make available on request, a Disability Statement describing the facilities which they provide for disabled students. In Northern Ireland, the provisions of the Act do not apply to universities, but universities there are required to publish Disability Statements as a condition of grant. The primary purpose of

the Disability Statement is to enable disabled students to establish whether an institution's facilities would be suitable for their particular needs and requirements.