

Code of Governance for Independent Providers of Higher Education

Independent Higher Education

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PREFACE

Effective governance is vital for any higher education provider, and the role of governing bodies (referred to herein as boards) has never been more important as we enter a period of significant change across our sector in relation to student expectations, labour markets, and in the role that institutions play in their local communities, nationally and globally.

Independent Higher Education (IHE) has worked with our membership and the sector as a whole to develop a new Code of Governance to support institutions to be effective and accountable in this new landscape – one that is focused on new high quality forms of provision, digital learning, wellbeing and more inclusive organisations.

This Code is designed as a foundation on which institutions can develop their own values, specialisms, and effective structures for the students and communities they serve. IHE will continue to work with our membership and develop supplementary guidance that should be read and applied alongside this Code to further embed best practice across the institutional diversity we see in the independent sector.

We do not believe there is a one-size-fits-all approach to education, and governance must reflect the size, shape and specialism of the institution. We hope this Code will go some way to supporting efficacy, accountability and quality in the institutions that adopt it, and in the development of new practice across the higher education sector.

ABOUT THE AUTHORS

Independent Higher Education established a working group of members and experts to oversee the development of this Code, as well as engaging the wider sector through a public consultation.

We would like to thank Shakespeare Martineau for the technical drafting of the Code, and in particular Smita Jamdar for her expert counsel.



Independent Higher Education

Independent Higher Education (IHE) is the UK membership organisation and national representative body for independent providers of higher education, professional training and pathways. IHE works to promote, support and enhance the independent tertiary education sector. We campaign for positive reforms to the regulatory and operating environment, work to share good practice and raise standards in the sector, and help our members to overcome challenges to succeed in their missions.



Shakespeare Martineau

Shakespeare Martineau is a full service law firm, which provides legal services to businesses, organisations, government departments, families and people throughout life and in business. Acting for over 100 further and higher education institutions across the full breadth of their legal service requirements, Shakespeare Martineau has a specialist education practice which is led by Smita Jamdar. Their presence, profile and expertise in the sector continues to be recognised by Legal 500 which consistently ranks Shakespeare Martineau as a Tier 1 firm for Higher Education.

ABOUT THE CODE

This Code has been produced for use by independent providers of higher education whose governance arrangements are often different from those adopted by traditional universities and colleges. Independent providers take a variety of different corporate forms. Many are companies limited by shares or guarantee, some are bodies established by Royal Charter and some are trusts or unincorporated associations. Some are for-profit, whilst others are not-for-profit or charitable. They vary enormously in size, from micro businesses and SMEs through to larger organisations.

Independent providers also have a diversity of ownership models, from family-run organisations to those with multiple shareholders or parent companies (UK-based or international), as well as some which simply form part of a larger organisation whose principal business is not itself higher education.

Independent providers have to respond to a wide range of stakeholders: shareholders and owners; awarding bodies and validating partners; staff and students; taxpayers and the wider public; regulatory bodies; and connected companies and organisations.

Their governance arrangements reflect this multiplicity of corporate form, ownership and accountability. Governance arrangements in this context mean the structures, systems and processes which control the interactions among the many players – shareholders, management, boards, staff, students, financial institutions, regulators and the community at large – with an interest in how independent providers are run.

The aim of this Code is to provide a shared set of principles which individual providers can adopt and adapt in order to:

- demonstrate generally accepted standards of good governance, appropriate to their corporate form;
- ensure good academic governance, management of academic risk, and provide suitable, robust assurance to the board in these areas;
- meet the expectations of their owners and other stakeholders;
- where relevant, comply with the requirements of the Office for Students

ABOUT THE CODE

- (OfS) and other sector bodies such as the Office of the Independent Adjudicator for Higher Education (OIA); and inspire confidence in the wider public.

This Code is based around a series of principles that are relevant to all independent providers, with commentary for each principle relating to its implementation in the various diverse contexts summarised above. The Code is intended to be implemented flexibly: whilst the principles represent generally accepted good governance, the underpinning structures and ways of working to deliver the principles in practice will vary from provider to provider. It will be for each provider to determine how best the principles can be embedded in their own specific context.

This Code is produced on an “apply or explain” basis. Providers are encouraged to meet the principles by applying the recommended practices set out in the commentary, or explaining why they have not applied them and/or what they have done instead.

This document provides the code framework and summary. It should be used with the forthcoming guidance developed to support independent higher education providers to implement the ten principles.

PRINCIPLES

1. CLARITY OF ROLES

Every provider must establish an appropriate governance framework through which decisions about the organisation's short, medium and long term needs and objectives are made, with a clear primary decision-making or governing body (the board), and clear division of responsibility between governance and management.

2. COLLECTIVE RESPONSIBILITY

The board should be an effective, primary decision-making body with collective responsibility for the long-term success of the provider, for determining the organisational objectives, values, culture and strategy necessary to deliver that long-term success, and for safeguarding and promoting the good reputation of the provider.

3. ACADEMIC GOVERNANCE

There should be an appropriate framework in place for academic governance and the management of academic risk which ensures that academic standards are maintained and quality is enhanced.

4. RISK MANAGEMENT

The board should have oversight of key policies and procedures, and should have overall responsibility for risk management and internal control.

5. SIZE AND SKILL

The board should be of an appropriate size and composition and have the requisite skills to discharge its responsibilities under this Code.

6. EFFECTIVENESS

The board and any committees should discharge their duties in an effective and efficient way.

7. INTEGRITY

Board members should discharge their duties to a high standard of professionalism, act with integrity, and conduct themselves openly and transparently, with appropriate regard to confidentiality.

8. REMUNERATION

Remuneration of board members and senior staff at the provider should be appropriate and designed to support the strategy and long-term sustainable success of the provider.

9. FAIR REPORTING

External reporting should be fair and balanced, and minutes of board meetings (and key committees) should be published unless they relate to confidential matters.

10. STUDENTS AND STAKEHOLDERS

There should be an appropriate level of dialogue between the board and the provider's shareholders and other stakeholders, and appropriate engagement with students.

PRINCIPLE ONE: CLARITY OF ROLES

1. Every provider must establish an appropriate* governance framework through which decisions about the organisation's short, medium and long term needs and objectives are made, with a clear primary decision-making or governing body (the board), and clear division of responsibility between governance and management.

OVERVIEW

- 1.1** The governance framework of the provider should clearly set out the main structures and roles involved in running the organisation and how they work together in making decisions about the organisation.
- 1.2** The governance framework should consist of: (i) the constitutional or foundational document of the provider (such as its Articles of Association, Royal Charter or, if it is not an incorporated body, its instrument of government), which should identify a governing body (the board); (ii) Terms of Reference and/or role descriptions for each of the bodies and positions involved (such as the Board of Directors, Governors or Trustees, the Academic Board and the Principal or Chief Executive), which should complement each other and not conflict or, without good reason, overlap; and (iii) a clear Scheme of Delegation establishing where and how decisions on different aspects of the organisation's activities are made and scrutinised.
- 1.3** Any matters which are reserved to shareholders, parent companies, family trusts and/or other related organisations should be explicitly stated, but the governance framework should recognise that the board is the primary decision-making body of the provider and any constraints on the ability of the board to make decisions should be kept to the minimum necessary to safeguard the legitimate interests of such stakeholders.
- 1.4** The board can and should delegate matters in an appropriate way to committees or to management. The Scheme of Delegation should be regularly reviewed to determine if delegations remain appropriate.
- 1.5** Where the provider is or intends to be registered with the Office for Students (OfS), the governance framework should explicitly make reference to the Regulatory Framework's public interest governance principles.
- 1.6** Information about the provider's governance framework should be published and easily accessible to the provider's stakeholders and the wider public.
- 1.7** Published information about the provider's governance should be transparent about relationships with other group companies and with parent and connected organisations.

* In this Code, appropriate means in a way that suits the unique circumstances of the provider whilst continuing to meet the Code's principles.

PRINCIPLE TWO: COLLECTIVE RESPONSIBILITY

2. The board should be an effective, primary decision-making body with collective responsibility for the long-term success of the provider, for determining the organisational objectives, values, culture and strategy necessary to deliver that long-term success, and for safeguarding and promoting the good reputation of the provider.

OVERVIEW

- 2.1** The board is responsible for leading the provider successfully in the long term, including by providing appropriate levels of oversight, support and challenge to management.
- 2.2** The board should accept collective responsibility for determining the objectives, values, culture and strategy necessary to deliver long-term success for the provider.
- 2.3** The board should safeguard and promote the provider's institutional reputation by operating in accordance with the principles of this Code.
- 2.4** In the specific context of higher education, the board should ensure that the culture of the provider supports equality, inclusivity and diversity of staff and students, and facilitates fair outcomes for all students.
- 2.5** Working with management as appropriate, the board is responsible for ensuring that the necessary financial, human and other resources are in place to ensure that the provider's objectives, values, culture and strategy can be sustainably delivered over both the short and the long term.
- 2.6** The board is responsible for monitoring and periodically reviewing the performance, objectives, values, culture and strategy of the provider.
- 2.7** The board should ensure that the provider complies with its constitutional documents and with relevant legal, regulatory and governance requirements, including, for OfS-registered providers, the Regulatory Framework for higher education in England.
- 2.8** The board should have a clear, agreed and effective approach to equality, diversity and inclusion throughout the provider and in its own practice, and should regularly review the provider's performance in this area.
- 2.9** The board of a registered provider should ensure that it delivers in practice the Regulatory Framework's public interest governance principles.

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- 2.10** The board should appoint and periodically review the performance of a Chief Executive to lead the management team and exercise executive authority over the provider.
 - 2.11** The board of a registered provider should identify and nominate to the OfS an accountable officer (usually the Chief Executive) who will have the responsibilities set out by the OfS from time to time.
 - 2.12** Where members of the board also hold management responsibilities within the provider, they should be clear about the capacity in which they are acting at all times, and what they are and are not authorised to do in that capacity.

PRINCIPLE THREE: ACADEMIC GOVERNANCE

3. There should be an appropriate framework in place for academic governance and the management of academic risk which ensures that academic standards are maintained and quality is enhanced.

OVERVIEW

- 3.1** There should be an appropriate body (the academic board) to which the board delegates responsibility for maintaining and enhancing academic quality and standards.
- 3.2** The board should actively seek and receive assurance from the academic board that academic governance is robust and effective. “Academic governance” in this context means how the academic affairs of the provider are governed.
- 3.3** The board should receive, test and provide to stakeholders assurance on academic quality and standards and the integrity of academic qualifications, and should work with the academic board to maintain standards and continuously improve quality.
- 3.4** The board should receive assurance that specific academic risks (such as those involving validating partners and awarding bodies, the recruitment, retention and attainment of students, or grade inflation) are being effectively managed.
- 3.5** For registered providers, the board should understand, respect and uphold the principle of academic freedom (the ability within the law for academic staff to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges).
- 3.6** For registered providers, the board should understand the provider’s legal responsibilities to uphold freedom of speech within the law and be able to demonstrate this understanding.

PRINCIPLE FOUR: RISK MANAGEMENT

4. The board should have oversight of key policies and procedures, and should have overall responsibility for risk management and internal control.

OVERVIEW

- 4.1** The board should ensure that the provider has the policies and procedures it needs to deliver its objectives, values, culture and strategy and to meet its legal, regulatory and governance responsibilities, and that these policies and procedures are reviewed at appropriate intervals.
- 4.2** The provider's policies and procedures should ordinarily be published and easily accessible to its stakeholders, including staff and students, and members of the public.
- 4.3** The board should establish a process for identifying and keeping under review the key risks facing the provider and satisfy itself that any risks so identified are appropriately managed.
- 4.4** The board should establish an appropriate system of internal control, including financial controls.
- 4.5** The board should consider how the work of internal (if any) and external auditors should be overseen and agree how recommendations from auditors will be recorded and acted upon, for example through the production of an annual audit report.
- 4.6** The board should receive regular assurance that the conditions of any funding or OfS registration are being met.
- 4.7** The board should ensure that there are appropriate arrangements in place to consider complaints about alleged wrongdoing, impropriety and misconduct, including investigation and follow-up action.
- 4.8** The board should ensure that there is an effective and transparent process published and available to students which follows the principles of the Good Practice Framework requirements of the OIA Scheme (or equivalent independent redress scheme).

PRINCIPLE FIVE: SIZE AND SKILL

5. The board should be of an appropriate size and composition and have the requisite skills to discharge its responsibilities under this Code.

OVERVIEW

- 5.1 The membership of the board should reflect the skills and experience necessary to deliver the provider's objectives, values, culture and strategy, but should not be so large as to be unwieldy.
- 5.2 The board should establish processes to ensure that all members of the board are fit and proper persons.
- 5.3 Where relevant skills or experience are not reflected on the board, consideration should be given to how the board can fill these expertise gaps in a timely and appropriate way, for example by creating an advisory board as an interim step to further recruitment to the board.
- 5.4 The board should consider appointing an appropriate number of non-executive or independent members and, in the case of registered providers in receipt of financial support from the OfS, must appoint at least one independent member, with the requisite skills, experience and time to discharge their duties.
- 5.5 Any non-executive and/or independent directors should be appointed for a fixed period of time and any decision to renew or extend beyond this period should only be made for good reason in exceptional circumstances.
- 5.6 The board should consider whether it is appropriate to appoint a student representative to the board, and, if not, how student engagement with the board may otherwise be facilitated (see further Principle 10 below).
- 5.7 The board should establish appropriate processes for managing appointments to the board and for succession planning.

PRINCIPLE SIX: EFFECTIVENESS

6. The board and any committees should discharge their duties in an effective and efficient way.

OVERVIEW

- 6.1** The board should hold regular meetings and should receive timely and appropriate information.
- 6.2** The annual cycle of meetings for the board should be arranged so that the board is able to receive and scrutinise relevant reports from management and other governance bodies over whose activities the board is expected to exercise oversight.
- 6.3** There should be a chair of the board whose role it is to ensure that the board discharges its responsibilities effectively. Where the chair also holds a management role in the provider, they must always be clear in which capacity they are acting.
- 6.4** There should be agreed protocols, such as standing orders, for the conduct of meetings, including electronic meetings, covering matters such as how and when agendas and supporting documents should be prepared and circulated, what the quorum is, and how decisions will be made.
- 6.5** Information provided to the board should be timely, accurate and contain an appropriate level of detail that reflects the board's governance role.
- 6.6** Appropriate support should be available to the board to ensure that its meetings are arranged efficiently, that agendas are prepared and papers circulated in advance and that accurate minutes of meetings are taken.
- 6.7** The board should, wherever necessary, have access to and take advice and guidance in discharging its responsibilities. Where appropriate, a secretary to the board should be appointed, to provide operational and legal advice for compliance with the provider's governance framework. Where such a secretary is appointed, all members of the board should have access to them for advice. To ensure the secretary can discharge these functions effectively, they should be of sufficient seniority to ensure that the board acts in a way that is compliant with its legal, regulatory and governance functions.
- 6.8** The board should consider establishing, and providing resource to support, such committees as are necessary for the effective discharge of its duties, and agree and periodically review the membership and terms of reference of, and delegations to, such committees.

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- 6.9** Where appropriate to the size of the board, consideration should be given to appointing a vice-chair, to lead the board in the absence of the chair.
 - 6.10** Where appropriate to the size of the board, consideration should be given to the appointment of a senior independent director/governor/trustee to help advise the chair, to act as an intermediary for other board members and to help carry out an annual appraisal of the chair's performance.
 - 6.11** The board should periodically review its own effectiveness, with external input.

PRINCIPLE SEVEN: INTEGRITY

7. Board members should discharge their duties to a high standard of professionalism, act with integrity, and conduct themselves openly and transparently, with appropriate regard to confidentiality.

OVERVIEW

- 7.1** All board members should receive appropriate induction to understand their role as a member of the board and any specific role they hold such as chair or chair of a committee.
- 7.2** The chair should ensure that all members of the board continually update their skills, knowledge and familiarity with the provider and the environment in which it operates.
- 7.3** Independent members of the board should ensure they have the time and understanding necessary to discharge the role effectively.
- 7.4** The performance of each member of the board should be considered at regular intervals and appropriate steps taken to ensure that performance is of a consistently high standard.
- 7.5** The board should make its decisions collectively in the best interests of the provider and with an appropriate level of scrutiny and challenge of matters relevant to the decision in question.
- 7.6** If any individual member of the board disagrees with a collective decision of the board, they may ask for that to be minuted, but must nonetheless abide by it.
- 7.7** The board should act with openness, transparency and integrity and in a way that inspires confidence in the provider on the part of all stakeholders. Where appropriate, the board should act in accordance with the Nolan Principles of Public Life.
- 7.8** The board should establish appropriate processes to identify, record, declare and manage any actual or potential conflicts of interest.
- 7.9** There should be a register of interests that should be publicly accessible.

PRINCIPLE EIGHT: REMUNERATION

8. Remuneration of board members and senior staff at the provider should be appropriate and designed to support the strategy and long-term sustainable success of the provider.

OVERVIEW

- 8.1** Remuneration arrangements for board members and for senior staff should be approved by the board and should incentivise the behaviour and performance needed to deliver the strategy and long-term sustainable success of the provider.
- 8.2** The board's policy on and procedures for determining remuneration should be published.
- 8.3** Decisions about remuneration should reflect performance.
- 8.4** No one should be involved in making or influencing decisions about their own remuneration.
- 8.5** For providers which are charities, remuneration of members of the board must meet the requirements of the [Charity Commission's guidance on trustee expenses and payments \(CC11\)](#).
- 8.6** Registered providers must comply with the [OfS's requirements on senior staff pay](#).

PRINCIPLE NINE: FAIR REPORTING

9. External reporting should be fair and balanced, and minutes of board meetings (and key committees) should be published unless they relate to confidential matters.

OVERVIEW

- 9.1** The board should publish an annual report of the performance of the provider against its strategy, objectives and values.
- 9.2** The board should ensure that it publishes accurate information on the use of public funding and value for money on the provider's website, as well as any other information that supports regulatory compliance and accountability to all stakeholders.
- 9.3** The board should consider whether the minutes of the board and any committees should be published on the provider's website.
- 9.4** For registered providers, it is a requirement of the OfS that minutes of the meetings of the board and its committees are publicly available except where genuinely confidential.
- 9.5** Where a matter is designated as confidential, there should be a periodic review of the designation of confidentiality to determine its continued appropriateness.

PRINCIPLE TEN: STUDENTS AND STAKEHOLDERS

10. There should be an appropriate level of dialogue between the board and the provider's shareholders and other stakeholders, and appropriate engagement with students.

OVERVIEW

- 10.1** The board should identify the key stakeholders of the provider and determine how it will engage in appropriate and meaningful dialogue with each stakeholder group.
- 10.2** The board should consider how the concerns of each stakeholder group in connection with the provider's strategy, values, culture and performance can be effectively communicated to it and be taken appropriately into account.
- 10.3** A key stakeholder group will be the provider's students, and the board should ensure that the provider acts in their best interests and that there are opportunities for two-way communication between the board and students.
- 10.4** The board should ensure there is an appropriate feedback mechanism to allow it to have oversight of issues and themes arising from student complaints.
- 10.5** Students and staff should have the opportunity to engage with the governance of the provider, allowing a range of perspectives to have influence.
- 10.6** The board should consider whether it would benefit from the skills of a student representative on the board (see Principle 5) and how the views of students may be heard by the board.

RESOURCES

1.5, 2.9	Office for Students: Regulatory Framework: Public Interest Governance Principles https://www.officeforstudents.org.uk/advice-and-guidance/regulation/conditions-of-registration/public-interest-governance-principles/
2.11	Office for Students: Regulatory Framework: Accountable Officers https://www.officeforstudents.org.uk/publications/regulatory-advice-10-accountable-officers-guidance-for-providers-on-the-responsibilities-of-accountable-officers/
3.5, 3.6	UK Government: Higher education: free speech and academic freedom (Annex A: Wider existing legislative framework) https://www.gov.uk/government/publications/higher-education-free-speech-and-academic-freedom
4.6	Office for Students: Conditions of Registration https://www.officeforstudents.org.uk/advice-and-guidance/regulation/conditions-of-registration/
4.8	Office of the Independent Adjudicator: Good Practice Framework https://www.oiahe.org.uk/resources-and-publications/good-practice-framework/
5.2	Office for Students: What is a fit and proper person? https://www.officeforstudents.org.uk/advice-and-guidance/regulation/conditions-of-registration/public-interest-governance-principles/
7.7	UK Government: Nolan Principles of Public Life https://www.gov.uk/government/publications/the-7-principles-of-public-life
8.5	Charity Commission: Charity Commission Trustee expenses and payments (CC11) https://www.gov.uk/government/publications/trustee-expenses-and-payments-cc11
8.6	Office for Students: Senior Staff Pay https://www.officeforstudents.org.uk/advice-and-guidance/regulation/senior-staff-pay/



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