

Code of Best Practice for Members of the Higher Education Funding Council for England

Introduction

1. The purpose of this Code is both to

- give guidance to Board, committee members, senior managers and others who contribute to HEFCE at a governance level
- give confidence to the general public and other stakeholders as to the HEFCE standard of conduct.

2. This Code was approved by the Board in 2008 and updates the version published in 1997. It is based on Treasury guidance, the reports of the Committee on Standards in Public Life, and guidance received from the National Audit Office and the former Department for Innovation Universities and Skills (now the Department for Business, Innovation and Skills (BIS) - HEFCE's sponsor department)

Public service values. The Board and its Executive (that is, the paid staff of HEFCE led by the Chief Executive) must at all times:

- a. Observe the highest standards of impartiality, integrity and objectivity in relation to the stewardship of public funds and management of the Council.
- b. Comply fully with the principles of openness, and comply with all reasonable requests for information from Parliament, the Secretary of State, users of services and individual citizens.
- c. Be accountable to Parliament, users of services, individual citizens and staff for the activities of the Council, its stewardship of public funds and the extent to which key performance targets and objectives have been met.
- d. Maximise value for money through ensuring that services are delivered in the most efficient and economical way, within available resources, and with independent validation of performance wherever practicable.

Relationship with the sponsor department

3. The Secretary of State for Business, Innovation and Skills is answerable to Parliament for the policies and performance of all public bodies sponsored by BIS, including their use of resources and the policy framework within which they operate. The respective roles of BIS and the Council are set out in the Management Statement. This is supplemented by the Financial Memorandum specifying the terms on which the Council receives and spends its funds.

Role of the Chair

4. Communications between the Board and the Secretary of State will normally be through the Chair (while day-to-day contact between HEFCE and BIS is the responsibility of the Chief Executive). Nevertheless, the individual member has the right of access to Ministers on any other matter which they believe raises important issues relating to their duties as a Board member, or in respect of their appointment. In such cases, the member should normally inform the Chair.

5. Day-to-day business between the Council and BIS is conducted by the Chief Executive and other members of staff.

7. The Chair has prime responsibility for providing effective strategic leadership on:

- a. Leading and developing the overall strategic direction of the Board.
- b. Representing the views of the Board to the general public and to the Secretary of State.
- c. Ensuring that the Board, in reaching decisions, takes proper account of guidance and instructions from the Secretary of State and the BIS.
- d. Ensuring that the Board meets at regular intervals throughout the year; and that minutes of meetings accurately record both the Board's decisions and, where appropriate, the views of individual Board members.
- e. Ensuring that the Board and its members operate in accordance with this Code of Practice.
- f. Advising the department on the membership needs of the Board.
- g. Arranging for the appropriate induction and support of Board members (see following paragraph).
- h. Appraising the performance of members, and keeping under review the effectiveness of the Board.

6. The Chair should ensure that all Board members, when taking up office, are fully briefed on the terms of their appointment, and on their duties and responsibilities. They should also be given a copy of this Code; and other relevant background material such as the strategic plan, annual report and the Financial Memorandum; the Board's standing orders and scheme of delegation, the Non-Departmental Public Bodies Accounting Officer Memorandum; notes describing the Council's organisational structure and its statutory basis of operation; and the Board's standing orders. The Chair should encourage new Board members to attend an induction course on the duties of Board members of public bodies, or some other suitable induction programme. This will include a governance briefing from the Clerk to the Board.

Role of the Chief Executive

8. The Chief Executive has prime responsibility for:

- a. Ensuring complete and accurate advice to the Board in order that it can undertake its functions.
- b. Formulating and recommending strategies to the Board for discussion and decision.
- c. Implementing Board decisions.
- d. Representing HEFCE with government departments, select committees and stakeholders
- e. Requiring high standards of propriety of staff, and the efficient, effective and sustainable use of other resources throughout HEFCE.
- f. Approving the operating plan and budgets to implement the Board's strategic plan.
- g. Accounting for the Council's performance and expenditure.

Corporate responsibilities of board members

9. Board members have corporate responsibility for ensuring that HEFCE complies with any statutory or administrative requirements for the use of public funds. Other important responsibilities of Board members include:

- a. Approving the overall strategic direction of HEFCE within the policy and resources framework agreed with the Secretary of State.
- b. Ensuring that HEFCE follows the principles of openness, which include giving prompt responses to public requests for information.
- c. Ensuring that high standards of corporate governance are observed at all times by the Board and its committees.
- d. Overseeing the delivery of planned results by monitoring performance against agreed strategic objectives and targets.
- e. Ensuring that, in reaching decisions, the Board has taken into account any guidance or instruction issued by BIS.
- f. Taking due account of sector impact and risks assessments, for example, as advised in Board papers and presentations, and in operating performance reports.
- g. Ultimate responsibility for ensuring that HEFCE operates within the limits of its statutory authority; within the limits of the Council's delegated authority agreed with the BIS; and in accordance with any other conditions relating to the use of public funds, and ensuring effective arrangements to discharge this responsibility through the Chair and the Chief Executive.
- h. Ensuring that there are satisfactory arrangements in place for the Board to receive assurance about HEFCE's corporate governance, internal control and risk management, including through the Audit Committee and the Teaching, Quality, and Student Experience Committee.
- i. Evaluating the effectiveness of the Board and its committees.
- j. Advising ministers on their higher education policies.

10. HEFCE is established under the Further and Higher Education Act 1992 and has corporate responsibility for all actions taken by Board members, including any wrongful ones. This means that, if judgement is made against HEFCE, then any financial settlement would

normally be met from the Council's funds rather than from the personal assets of individual Board members (see paragraph 14 below regarding Board members' indemnity).

Responsibilities of individual Board and committee members

11. Individual members should also be aware of their wider responsibilities as members. Like others who serve in public office, they should follow the seven principles of public life set out by the Committee on Standards in Public Life (the former Nolan Committee). These are given at Annex A. Board members must:

- a. Undertake on appointment to comply at all times with this Code of Best Practice and with rules relating to the use of public funds.
- b. Act in good faith and in the best interests of the Council.
- c. Not misuse information gained in the course of their public service for personal gain or for political purposes, nor seek to use the opportunity of public service to promote their private interests or those of connected persons, firms, businesses or other organisations.
- d. Respect the confidentiality of Board papers until they have been received by the Board and subsequently published (that is, by release after the meeting or on the HEFCE web-site).
- e. Comply with the Board's rules on the acceptance of gifts and hospitality.

12. Board members are expected not to occupy paid party political posts or hold particularly sensitive or high-profile unpaid roles in a political party. However, members are free to engage in political activities, provided that they are conscious of their general public responsibilities and exercise a proper discretion, particularly in regard to the work of the Council. On matters directly affecting that work, they should not make political speeches or engage in other political activities. The Chair and Chief Executive should abstain from all controversial political activities. However, these restrictions do not apply to members serving as non-party local councillors or to Peers not taking a party whip in the House of Lords.

Liability and indemnity

13. Any legal proceedings initiated by a third party are likely to be brought against the Council. In exceptional cases proceedings (civil or criminal) may be brought against the Chair or other individual Board members. For example, a Board member may be personally liable if he or she makes a fraudulent or negligent statement which results in loss to a third party. Board members who misuse information gained by virtue of their position may be liable for breach of confidence under common law or may commit a criminal offence under insider dealing legislation.

14. However, individual Board members who act honestly, reasonably, in good faith and without negligence should not normally incur any liability in an individual capacity, provided they are acting in furtherance of their Board functions.

15. Under the terms of appointment set out in Schedule 1, Section 4 of the Further and Higher Education (FHE) Act, the Secretary of State is empowered to remove a Board member from office if he or she is absent from Board meetings for longer than six consecutive months without the Board's permission, or is unable or unfit to discharge the functions of a Board member.

Professional advice

16. Board members may wish to seek professional advice in the furtherance of their duties. Normally they should consult the Council's professional advisers. However, if they consider it necessary to take independent advice, they will be entitled to do so at the Council's expense on condition that the Chair or Chief Executive is consulted beforehand, and subject to a limit of £10,000 in any one instance. Expenditure in excess of this sum may only be incurred with the prior approval of the Board.

Interests of Board members

17. Members should register with the Clerk to the Board any personal or business interests which may conflict or be seen to conflict with their responsibilities. Members also have the opportunity to declare interests at the start of each meeting. Guidance on the acceptance of gifts, hospitality and awards is given at Annex B. Guidance on registering interests is at Annex C.

Delegation

18. With the exception of the Chief Executive, Board members serve on a part-time basis. To the extent permitted by the FHE Act, responsibility for day-to-day matters is delegated through the Chief Executive to staff so far as is practicable, within a clearly understood framework of control.

19. The Board delegates responsibility for specified matters to the Chair, Chief Executive or committees of the Council. From time to time, the Board revises the scheme of delegation to the Chair and the Chief Executive, covering the Council's administrative budget, allocation of funds within budgets agreed by the Board, and approvals required under the Financial Memorandum between the Council and institutions (see Board paper B35/07 April 2007 at www.hefce.ac.uk under Publications/HEFCE Board papers).

Strategic planning and control

20. The Board is responsible for approving a strategic plan. Preparing the strategic plan provides an opportunity for the Council to determine its key strategic objectives; and to agree with the Secretary of State or departmental officials, the policy and resources framework within which the Council will discharge its duties and key performance targets.

Openness and responsiveness

21. Board members and the Executive should conduct all their dealings with the public in an open and responsible way. They should take account of the Standard of Best Practice for Openness in Executive non-departmental public bodies (NDPBs) and NHS bodies in the 'First Report of the Committee on Standards in Public Life' (Cm 2850-I) and the Freedom of Information Act. Wherever possible, the Board should provide for access to records of their decisions and should publicise the arrangements made. To this end, Board papers are normally published on the HEFCE web-site within three weeks of the meeting. Likewise, Board and committee vacancies and members' registered interests are published.

22. Board members are responsible for providing Parliament (including its Select Committees) and the public with as full information as may be reasonably requested concerning their policy decisions and actions. They should be able to demonstrate that they are using resources to good effect, with probity, and without grounds for criticism that public funds are being used for private, partisan or party political purposes. With this in mind, the reports and formal opinions of the Audit Committee are published. Board members and Council staff should conduct all their dealings with the public in an open and responsible way.

Accountability for public funds

23. Board members have a duty to ensure that public funds (which for this purpose include all forms of receipts from fees, charges and other sources) are properly safeguarded. They must ensure that at all times the Council conducts its operations as economically, efficiently and effectively as possible, with full regard to the relevant statutory provisions and to relevant guidance in Managing Public Money (formerly Government Accounting).

24. Board members are responsible for ensuring that the Council does not exceed its powers or functions, which may be defined in statute or otherwise, or through limitations on its authority to incur expenditure. Members are normally advised on these matters by the Chief Executive and the Council's legal advisers.

Annual report and accounts

26. As part of its responsibilities for the stewardship of public funds, the Board should ensure that a full statement of the use of such resources is included in the annual report and accounts. These accounts should be prepared in accordance with the Accounts Direction issued by the Secretary of State for Business, Innovation and Skills, and such other guidance as may be issued, from time to time, by the BIS and the Treasury.

27. The Council's annual report and accounts should be well publicised. The annual report should contain a summary of the annual accounts and details of how to obtain the full accounts. A statement by the auditors should be included in the summary to confirm that it is consistent with the annual accounts. It should also state whether the report on the annual accounts is qualified and provide details if this is the case.

28. The annual report should:

- provide a full description of the Council's activities
- state the extent to which key strategic objectives and agreed financial and other performance targets have been met
- list the names of current Board members and senior staff
- give details of remuneration of Board members and senior staff in accordance with Treasury guidance
- contain information on access to the register of members' interests.

The role of the accounting officer

29. The Chief Executive has responsibility, under the Board, for the overall organisation, management, and staffing of the Council and for its procedures in financial and other matters, including conduct and discipline. This involves promoting by leadership and example, the principles of the Committee on Standards in Public Life. Board members generally, and the Audit Committee in particular, should support the Chief Executive in undertaking this responsibility.

30. The Chief Executive is the Council's designated Accounting Officer. S/he is responsible to Parliament and the Accounting Officer of the DIUS for the resources under his/her control. S/he has personal responsibility for the propriety and regularity of the public finances for which the Council is answerable; for keeping proper accounts; for prudent and economical administration; for avoiding of waste and extravagance; and for the efficient and effective use of all the resources in the Council's charge. The Accounting Officer has a responsibility to see that appropriate advice is tendered to the Board on all these matters.

31. More detailed guidance on the role of an Accounting Officer is set out in the NDPB Accounting Officer Memorandum, which covers appearances before the Public Accounts Committee of the House of Commons. There is further guidance in HM Treasury's handbook 'Regularity and Propriety'.

Audit

32. The terms of reference and current membership of the Council's Audit Committee are attached at Annex D. The Committee is chaired by a Board member, who reports the outcomes of Audit Committee meetings to the Board, including its formal opinions on the audited accounts before the board approves them.

The Council as employer

33. The Board should ensure that:

- a. The Council complies with all relevant employment legislation, and that it employs suitably qualified staff who will discharge their responsibilities in accordance with the high standards expected of staff employed by public bodies. All staff should be familiar with the HEFCE's main aims and objectives.

- b. The Council adopts management practices which use resources in the most efficient and economical manner.
- c. The Council's rules for recruiting and managing staff provide for appointment and advancement on merit, on the basis of equal opportunity for all applicants and staff. In filling senior staff appointments, the Board should satisfy itself that the Executive considers an adequate field of qualified candidates, and should always consider the merits of full open competition, which should normally be used for recruitment of external candidates.
- d. The Board and its staff have access to expert advice and suitable training opportunities to enable them to exercise their responsibilities effectively.

36. The Board will adopt a code of conduct for its staff using the model issued for executive NDPBs by the Cabinet Office in August 1996, subject to any modifications that may be necessary - and that are agreed with BIS - to take account of the Council's own particular characteristics and circumstances. This will cover arrangements to enable staff to raise concerns about propriety with a nominated official in the first instance and subsequently, if necessary, with a nominated BIS official. To this end, a 'whistleblowing' procedure is in the HEFCE Staff Guide.

37. The Board has a responsibility to monitor the performance of the Chief Executive and other senior staff. To this end, the Board's Remuneration Committee is chaired by the Chair of the Board and comprises two other Board members; it has delegated authority to determine the terms and conditions of employment of the Chief Executive and the performance and performance-related pay of the Chief Executive and directors.

Annex A

The Seven Principles of Public Life

Outlined in 'Spending Public Money: Governance and Audit Issues', (Cmnd. 3179), March 1996.

The following seven principles of public life were set out by the Committee on Standards in Public Life (the Nolan Committee) for the benefit of all who serve the public.

1. 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 family, or their friends.

2. **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.

3. **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.

4. **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.

5. **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.

6. **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.

7. **Leadership**

Holders of public office should promote and support these principles by leadership and example.

Annex B

Acceptance of gifts, hospitality and awards

1. The Council is responsible for allocating significant sums of public money.

2. It is imperative that members should maintain high standards of propriety and professionalism if they are offered gifts, hospitality or awards.
3. Some members may spend time with representatives of institutions and other organisations where it is normal business practice or social convention to offer gifts, hospitality or awards. Offers of this kind can place members in a difficult position since to refuse may cause misunderstanding or offence; but to accept may give rise to questions of impropriety or conflict of interest, or to criminal liability.
4. Members may not accept any benefit as an inducement or reward either for:
 - a. taking any action (or specifically not taking action) in his or her official capacity as a member.
 - b. showing favour (or disfavour) to anyone in his or her official capacity as a member.
5. The guiding principles are:
 - a. The conduct of individuals must not create suspicion of any conflict between their official duty and their private interest.
 - b. The actions of individuals in their official capacity must not give the impression (to any member of the public, to any organisation with whom they deal or to their colleagues) that they have been (or may have been) influenced by a benefit to show favour or disfavour to any person or organisation.

Gifts

6. Gifts other than of token value should generally be refused or avoided. Members should register any gift whose value is estimated to exceed £5.00. The member should also have regard to whether a gift, or the circumstances in which it is offered, are appropriate. The yardstick for appropriateness is the risk of embarrassment to, or loss of public confidence in, either the member or HEFCE.
7. If members have any doubts about whether a gift should be refused (it is accepted, for example, that refusal of a gift may cause offence), they should consult the Clerk to the Board who at their discretion may discuss the matter with the Chair.
8. If the Clerk considers that a gift cannot be used to support the Council's business, they may authorise retention of the gift by the member. Alternatively, if the member does not wish to retain the gift, then arrangements may be made for the gift to be stored until disposal, for example, for charity.
9. Board members should record any gifts whether given or offered, or whether refused or accepted, in the central register held by the Clerk, who will also register whether a gift has been accepted, registered, refused or disposed of. Any Board member with a query about the contents of the register should direct it to the Clerk.

Hospitality

10. It is accepted that members may receive hospitality from the head or senior members of an institution; that they may attend as part of their official HEFCE function an event organised by another body for promotional or influential purpose; that they may sometimes be offered a nominal fee for presenting a paper or speech at a conference; and may receive the occasional invitation to a cultural event. The normal level of hospitality may include alcoholic drinks at, say, an official reception or working dinner.

11. Offers of hospitality that exceed the normal level described above should in general be refused. The following items should be avoided:

- a. Hospitality offered instead of fees for broadcasts, speeches, lectures or other work done.
- b. Inducements which could lead to a contractual relationship between the Council and a supplier or consultant.
- c. Substantial offers of social functions, travel or accommodation.
- d. Acceptance of meals, tickets and invitations to sporting, cultural or social events, particularly from the same source.

12. If members have any doubt about whether to accept hospitality they should refer the matter to the Clerk, who in turn may discuss it with the Chair.

13. If, exceptionally, the Clerk agrees that the circumstances justify the normal level of hospitality being exceeded, this will be recorded in the central register.

Awards and prizes

14. Board members should consult the Clerk if they are approached by an outside organisation offering an award or prize which could in any way be seen to be connected with their role as Board members. Retention of the award or prize will normally be allowed, provided that:

- a. It is offered in recognition of personal achievement.
- b. It is not a gift (see above).

15. In deciding whether the award would give rise to public criticism that it was in fact a gift, members are advised to consider:

- a. The status of the awarding body - for example, whether it is a registered charity, a funded HEI or a related body.
- b. The regularity and nature of the awards made by the body.
- c. The range of people or bodies to whom the awards are given.
- d. The method of selection.
- e. The standing of the selectors.
- f. Actual or potential Council dealings with the awarding body.

These provisions do not apply to the acceptance of Honours.

Annex C

Declaration of interests and register of interests

1. The code of best practice requires that the Chair and other Board members should declare any personal or business interests which may conflict with their responsibilities as Board members. This requirement is to protect the reputation both of individual members and HEFCE.

Declaration of interests

2. Any member who has a material interest, either directly or through a partner, spouse or close relative, in matters likely to be considered by the meeting should declare that interest at the start of the meeting. Most members have a connection with at least one institution that receives public funding. Instances of formulaic funding to an institution (for example, in the funding round) should not prejudice a member's attendance at a meeting where such funding is to be approved, or where funding strategies are considered. However, members should carefully consider instances of ad hoc or competitive funding which will benefit their institution to the exclusion of others: if there is the risk of such a conflict of interest then the member should declare this and leave the meeting if either they or the Chair consider this to be appropriate. Such declarations should describe the interest clearly and state whether it carries direct or indirect financial benefits. This requirement also applies to directors.

3. Relevant interests in this context include:

- a. Executive and non-executive directorships of, significant shareholdings in, or employment by, public or private companies likely or possibly seeking to do business with the Council or with any of the institutions or organisations it funds.
- b. Ownership or part-ownership of, or employment by, businesses or consultancies likely or possibly seeking to do business with the Council or with any of the institutions or organisations it funds.
- c. Remunerated or honorary positions and other connections with HE or FE institutions or organisations which may give rise to a conflict of interest.

Register of interests

4. The code requires that a formal register of Board members' interests is established. To make the register available to the public, it is published on the HEFCE web-site. The existence and availability of the register is noted in the annual report. The interests of committee members are registered and available on request.

What to register

The minimum test in deciding to register an interest is whether a member of the public could reasonably perceive that the member might be influenced by the interest, so members should err on the side of caution when deciding which of their interests to register. 'Relevant' interests are those that relate to the work of the HEFCE, any institution receiving public funds for higher education or any sector-wide body, as follows:

- a. Employment, including any tied accommodation.
- b. Appointments, whether paid or honorary, including membership of governing bodies or advisory groups.
- c. Contractual, consulting or business interests, including relevant directorships and shareholdings.
- d. Collaborations, including between institutions or by region or subject.
- e. Membership of societies or professional bodies with a relevant interest.

Exceptionally, a member may register an interest which is itself exempt from publication but which would be made known to the Clerk, Chief Executive and Chair. Members are advised to register any known relevant interests of their spouse, partner or immediate family.

6. The register is kept up to date through a survey of members' interests, carried out by the Clerk to the Board at least annually.

Conduct in meetings

7. Any member who has a clear and substantial interest in a matter under consideration by the meeting should declare that interest at the start of the meeting where the matter is to be discussed, whether or not that interest is already recorded in the Register. At the discretion of the Chair, the member concerned should withdraw from the meeting during the relevant discussion or decision.

Membership of committees

8. Board members should not accept positions on Council committees or working groups where a conflict of interest is likely to arise.

Annex D

Audit Committee

<http://www.hefce.ac.uk/aboutus/board/committees/audit.htm>

