

# Higher Education Funding Council for Wales (HEFCW)

Independent review of HEFCW's governance processes

## **Report**

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# 1. Introduction

Resulting from HEFCW's regular examinations of the quality of its governance, HEFCW has continued to conclude that overall its governance processes and practices are effective and appropriate.

Each year HEFCW's Council has conducted a self-assessment and once every three years a more detailed self-assessment based around questionnaires completed by each Council member with the outcomes being discussed at a Council Workshop. The most recent more detailed self-assessment was carried out in 2015-16.<sup>1</sup>

This report results from a decision by HEFCW's Council at its 2018-19 review to procure for the first time an independent external review of its governance processes. It is conducted against the backdrop of possible future changes in the governance of further and higher education in Wales which may result in HEFCW being revised or replaced in 2023 or thereabouts.

While the quantum of funds, currently about £150m p.a., distributed by HEFCW has reduced significantly following the introduction of student loans, HEFCW's oversight responsibilities of the institutions it funds remains undiminished.

As part of this Review we conducted an on-line survey of HEFCW's corporate governance from the perspectives of Council members, committee members and HEFCW executives. The survey was developed for the first time especially for this Review and first trialled and amended before being used. We provide the detailed results of this survey in a separate volume and have incorporated the results, where appropriate, into this report's findings and recommendations.

Our recommendations in **section 5** of this Report are in two forms. Some invite Council to consider the suggestion we are making. With respect to the other recommendations we are more prescriptive about the appropriate action that HEFCW should take.

In undertaking our Review we have benchmarked HEFCW against the sources listed below to the extent relevant, and have endeavoured to draw attention to anything therein applicable to HEFCW which we consider is not being conformed to:

- FRC, Financial Reporting Council (2018) *Guidance on Board Effectiveness*
- Financial Reporting Council (2018) *The UK Corporate Governance Code*
- HM Treasury (March 2016) *Audit and Risk Assurance Committee Handbook*
- HM Treasury, Cabinet Office (April 2017) *Corporate Governance in Central Government Departments: Code of Good Practice*
- HM Treasury, Cabinet Office (April 2017) *Corporate Governance in Central Government Departments: Code of Good Practice – Guidance Note*

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<sup>1</sup> HEFCW's *Annual Report and Accounts for the year ended 31 March 2019*, pps 23-24  
[[https://www.hefcw.ac.uk/documents/publications/corporate\\_documents/Annual%20Report/HEFCW%20statutory%20accounts%202018-19%20English.pdf](https://www.hefcw.ac.uk/documents/publications/corporate_documents/Annual%20Report/HEFCW%20statutory%20accounts%202018-19%20English.pdf)].

- National Audit Office (September 2017) *Audit Committee Self-Assessment Checklist*.
- National Audit Office (November 2017) *Audit and Risk Assurance Committee Effectiveness Checklist*
- The Institute of Internal Auditors (2019) *Guidance on Effective Internal Audit in the Financial Services Sector*
- WGSB *Framework Document: Higher Education Funding Council For Wales* (2014).

Footnotes in this Report cross reference extensively to the above sources and provide links to them.

In this report non-Council members of Council's committees are termed 'co-opted members' rather than 'independent members' to distinguish from Council members who are all independent.

We would like to express our appreciation for the open and helpful approach of HEFCW's Council and committee members and executive team in assisting us with this Review, and in particular for the considerable assistance we have had from Council's Secretary.

## 2. Objectives

While the objectives of this review are set out in **Annex 7.1**, HEFCW was open to us commenting on elements we noted which were outside these objectives. Accordingly we have looked at HEFCW's governance culture and the outcomes of HEFCW's governance more than was directly required by the specification.

## 3. Scope

The scope and our comments on scope limitations are also set out in **Annex 7.1**. While HEFCW was open to us exploring the perceptions of senior HEFCW executives about the Council's corporate governance, our Review was less than 360° as we did not court the opinions of the Welsh Government's Sponsoring Department nor of the bodies part-funded via HEFCW. HEFCW has however recently carried out a Stakeholder Review.

In considering the role and contribution of Council and its committees we attended a Council meeting, a Council workshop, a meeting of the Audit and Risk Assurance Committee and a meeting of the Regulation Committee. In addition we held a series of one-to-one meetings with members of Council and of its committees and also with key executives, as set out in **Annex 7.2**.

We are scheduled to present our results to the meeting of Council on 23<sup>rd</sup> January 2020.

## 4. Conclusion

In our opinion the competency of HEFCW's Council and Council committee members is extraordinary as is their commitment to their governance responsibilities. The quality of management of HEFCW's governance processes by HEFCW's executive is excellent. Overall we consider that HEFCW is very well governed.

It is our view these high standards have been achieved more through the thoughtful development of approaches ideally suited to the special circumstances of HEFCW and less through a rote tick box application of what are considered to be standard corporate governance best practices. HEFCW's intention to consider the applicability of other recent corporate governance guidance confirms HEFCW's desire to select the best and most applicable corporate governance best practices. That said, there are a number of measures we recommend that HEFCW consider which we believe have the potential to further strengthen HEFCW's corporate governance.

The specification specifically called us to respond on the following matters:

- i. Is Council's governance oversight and challenge effective and of high quality? Is there evidence of sufficient and robust scrutiny and challenge by Council?
- ii. Is the Council's current committee structure fit for purpose and effective?
- iii. Is there an appropriate relationship between Council members and HEFCW staff? Does the Council add value to the work of staff, such as in the way in which it provides general steers and in its decisions?
- iv. Are induction arrangements for new Council members effective?
- v. Is Council effective in developing and monitoring the HEFCW Corporate Strategy?
- vi. Is Council assured that it is covering all its formal requirements and responsibilities?

We are pleased to conclude that the answer is 'yes' to all these questions. The rest of our report justifies, we hope, our conclusion. As also requested, we make proposals on how the Council might streamline and improve its governance and operational processes, while continuing to meet all its statutory responsibilities, and best to optimise Council members' time.

A number of our recommendations are about two related issues: decision making and the links between Council and its committees.

1. We suggest that Council's focus on decision making could be sharper and better evidenced. Amongst other suggestions to achieve this we propose making the Scheme of Delegation more prominent in Council thinking and renaming it the Scheme of Reservation (to Council) and Delegation. This we think should improve Council's focus on the matters which it has to decide upon and have the option of leaving other matters to others according to the matters which can be delegated.
2. There seems to be a desire from some committee members to have more feedback from Council both about what its concerns are and about what influence committees are having on Council deliberations. We suggest that the giving of feedback be built into the governance process. We further suggest that the committees be more explicit in what action (e.g. a decision or a steer) they consider Council might want to take in response to work in which the committees have been involved.

## **5. Main findings and recommendations**

### **5.1 Culture**

We considered HEFCW's culture during our work and in our survey. In HEFCW meetings we observed a relaxed collaborative style where meeting chairs encouraged everyone to contribute. We consider HEFCW's culture to be a real asset which should be nurtured.

The numerical responses to the survey section on Council culture are the most positive of the survey. Particularly positive were the Council views, supported only slightly less by the views of management, on openness in expressing their opinions, in feeling their views are listened to and valued and about the atmosphere of trust and constructive challenge.

The survey responses to the committee section indicate that culture in committees is good. Committee members' assessment is only slightly less positive than Council's. Members praised many aspects of the culture including the openness, trust, willingness to listen, robust and constructive discussion and challenge. Similarly, the responses from management to the survey also suggest healthy relationships between management and Council and committees.

Overall, we find HEFCW's culture is a real strength for HEFCW and difficult to fault. We do however recommend, in this section and elsewhere in our report, that Council and management be more systematic in providing feedback from Council to its committees. Our two reservations about this uniformly good picture regard how Council effectively sets values and standards and the links between Council and committees.

## **Recommendations:**

**5.1.1** HEFCW Council should take a more systematic and comprehensive approach to ensuring values, standards and good ethics are embedded.

**5.1.2** HEFCW should ensure that (i) committees articulate to Council what action they consider Council might take in response to work in which they are involved and (ii) Council gives more feedback to committees about its concerns and what it wants from its committees and on the influence committees have had on Council deliberations and decisions (see also **5.5.2**, **5.9.1** and **5.12.1** where we also make this recommendation).(see **6.1**)

## **5.2 Transparency**

While we recognise that information in the public domain may be used as a stick to beat HEFCW, nevertheless openness of disclosure is good governance and encourages public confidence – especially when there is a good story to tell. We consider HEFCW does not exploit this opportunity sufficiently (see **6.2**).

### **Recommendations:**

**5.2.1** HEFCW should consider changing the style of minutes such that the first part of a minute summarises the issue being considered and any decision taken. This need not include any confidential detail which could then be included in a more detailed part of the minute which is not made public.

**5.2.2** HEFCW should consider including on HEFCW's website for each agenda item either the supporting paper setting out the issue and recommendations etc or, if necessary, a redacted version of it.

**5.2.3** In tabular form the Annual Report should disclose the number of meetings of Council and its committees and the attendance record of members, including those co-opted, at these. Where members joined or left during the year, those dates should also be given.

**5.2.4** Much more information about risks, their assessment and their mitigation should appear in the Annual Report.

**5.2.5** The Annual Report should describe Council's role and activity in decision making, setting strategy, giving constructive challenge and in having oversight.

See also recommendations **5.4.1** and **5.4.2**.

### 5.3 Challenge and the decision-making process

The survey responses, and our observations in the meetings we attended, suggested that constructive challenge is a feature of Council and committee deliberations. From a governance point of view, a key question, however, is whether the approval asked of Council is for a matter reserved to Council by the Scheme of Delegation or whether it is a matter within the Chief Executive's authority and the latter was asking Council to ratify a decision he was empowered to take. We suggest that if it was a matter reserved to Council then Council should be asked to discuss it before giving approval.

Our impression is that many agenda items currently classified 'For discussion' should be regarded as 'For decision' and that some listed as 'For approval without discussion' should be discussed before approval (see **6.3**).

#### Recommendations:

**5.3.1** To provide greater clarity for Council decision-making and to improve accountability (of Council and of the Executive to Council), and transparency, Council should categorise agendas of Council and its committees, as follows:

- For discussion and decision (where it is a matter reserved to Council according to the Scheme of Delegation or not included in the powers delegated to the chair or Chief Executive (NB there should be no gaps));
- For discussion and decision (where a decision is *not required* by the Scheme of Delegation but is requested by the chair or Chief Executive: this could include matters within the Chief Executive's authority but where nevertheless he would like Council's approval);
- For discussion (with no decision required but (e.g.) a steer from Council is requested or where Council is asked to discuss and then note)
- For information only.

**5.3.2** The Scheme of Delegation should be renamed the Scheme of Reservation and Delegation in order to improve Council's focus on the matters reserved to it.

### 5.4 Setting and monitoring strategy

The setting and monitoring of HEFCW's strategy would be more robust if it received more attention at Council. Furthermore, we consider HEFCW should be more informative in its public disclosures about strategy (see **6.4**).

## **Recommendations:**

**5.4.1** Quarterly progress reports on activities in HEFCW's Operational Plan should be included in the 'For discussion' part of the agenda and the reports should be actively discussed by Council with a reasonable amount of time allocated for discussion.

**5.4.2** Future Annual Reports should contain a more comprehensive analysis of HEFCW's achievement against each of the 12 Corporate Performance Outcomes.

## **5.5 HEFCW's governance documents**

We have reviewed these carefully and set out the results of our review at **6.5**. Other than **5.5.2** (below), our recommendations are designed to make the set of governance documents more watertight in terms of best practice corporate governance.

### **Recommendations:**

**5.5.1** The Scheme of (Reservation and (see **5.3.2** above)) Delegation should be carefully reviewed to ensure there are no gaps between which powers are reserved to Council and the powers delegated to the chair and to the Chief Executive. One way to ensure no gaps and no ambiguity would be to delegate to the Chief Executive everything which is not specifically delegated to the chair, a committee or reserved to Council.

**5.5.2** There should be regular feedback from Council to each of Council's committees on how Council has taken notice of the committees' inputs including their impact on Council 'steers' and decisions (see also **5.1.2**, **5.9.1** and **5.12.1** where we also make this recommendation).

**5.5.3** The decision section of Council Standing Orders should say that all decisions should be made in accordance with the Scheme of Delegation.

**5.5.4** The Recommendation part of the Annex to Standing Orders setting out the structure of Council papers should also include whether the agreement sought is necessitated (a) because it would be a decision required by Council as one of reserved powers which cannot be delegated, (b) whether Council's approval is requested because the Chief Executive or chair requests it or (c) for some other reason. Where the agenda item is requesting authority to be delegated to the Chief Executive the paper should state (a) whether the Chief Executive is seeking additional authority because it is beyond his delegated authority or (b) for some other reason.

**5.5.5** We encourage HEFCW to use this Governance Review as a justification in asking the Welsh Government to update the Framework Document.

## **5.6 Welsh Government Citizen Centred Governance Principles**

Our Proposal for carrying out this governance review (**Annex 7.1**) set out to consider HEFCW's governance processes and arrangements with reference to the Welsh Government's Citizen-Centred Governance Principles. At **6.6** we discuss the arguably incomplete extent to which HEFCW places explicit emphasis on these principles, and the ways they integrate with other important documented requirements.

### **Recommendation:**

**5.6.1** We suggest that HEFCW considers providing a clearer focus by Council and its committees on the Welsh Government's Citizen-Centred Governance Principles by:

- including suitable references (e.g. in Standing Orders) to the need to adhere to the requirements of:
  - The Nolan Principles
  - Welsh Government Citizen Centred Governance Principles and
  - Well-being of Future Generations Act 2015in Council and committee Standing Orders and the Code of Practice;
- including information about these requirements in the induction process for new Council and committee members;
- Council and committee chairs and senior HEFCW staff referencing the requirements in discussions and reflecting this in the minutes; and
- reflecting on the application of these requirements in HEFCW's strategy, in the committee annual reports and in HEFCW's Annual Report.

## **5.7 Compliance with corporate governance codes and guidance**

At its Workshop in November 2018, HEFCW's Council agreed that, subject to the outcomes of this governance Review, it would take a fresh look at the Council's governance arrangements. See also **6.7**.

### **Recommendations:**

**5.7.1** We endorse HEFCW's proposal to review its corporate governance arrangements, emphasising the importance of benchmarking against the latest codes and guidelines. In our **Introduction (Section 1)**

we refer to the principal authoritative sources we made use of during our Review.

**5.7.2** HEFCW should follow the current best practice for listed companies on the raising of concerns by employees. This would mean Council:

- ensures there is means for the workforce to raise concerns in confidence and – if they wish – anonymously;
- reviews this routinely and the reports arising from its operation; and
- ensures that arrangements are in place for the proportionate and independent investigation of such matters and for follow-up action.

## **5.8 Deputy Chair and Lead Non-Executive Council Member**

Best practice corporate governance is committed to boards having a senior independent director (referred to many times in the *HM Treasury Corporate Governance Code* as the 'Lead Non-Executive Board Member'). HEFCW has alternatively opted to have a Deputy Chair. While it is clearly prudent to have in place arrangements for chairing HEFCW and its Council meetings in the absence of the Chair, there are important duties other than chairing that can be vested in the role of a lead Non-Executive Council Member (see **6.8** and **Annexes 7.3** and **7.4**).

### **Recommendation:**

**5.8.1** Council should establish the role of Lead Non-Executive Council Member while continuing to ensure that Council has arrangements for chairing Council in the absence of the Chair. These two roles could be discharged by the same Council member.

## **5.9 Council and committee structure**

The large number of Council committees is an appropriate way of approaching the responsibilities of Council in an organisation of this type; and the small number of Council members on most of the committees, two or three members, is also appropriate in all the circumstances. (See **6.9**).

We have three recommendations under this heading, and several relating to Council membership and to individual committees (see **5.10** to **5.14**).

### **Recommendations:**

**5.9.1** Council should consider introducing a process to provide feedback from Council to its committees about its concerns, what it wants from committees and how Council deliberations have been influenced by the

committees (see also **5.1.1**, **5.5.2** and **5.12.1** where we also made this recommendation).

**5.9.2** Council should ask its committees to consider routinely what action they consider Council should consider taking in response matters they are significantly involved in.

**5.9.3** Council member appointment letter terms and conditions should include participation in committee meetings.

## **5.10 The Audit and Risk Assurance Committee**

We consider the dual responsibilities of ARAC for oversight of (a) funded institutional risk and (b) HEFCW's internal risks may be too challenging to have sufficient focus – especially on the latter for which we consider the risks involved may not be sufficiently addressed by ARAC. Because of its latter role, only committee members should have the right to attend ARAC, and ARAC should have the reserve power to convene and hold meetings without reference to, or knowledge of, management. See **6.10**.

### **Recommendations:**

**5.10.1** Council should consider splitting ARAC into two committees:

- An ARAC Committee focussing on HEFCW's accounting, financial reporting, external and internal auditing, and internal quality assurance and risk management processes;
- An Institutional Risk Committee focussing on the regulation of the entities HEFCW finances, including the identification, assessment and mitigation of regulatory risks in those entities.

**5.10.2** If our recommendation **5.10.1** were not agreed to, ARAC should alternate the sequence of the sections of the agenda between the institutional risk category and the internal HEFCW category as the first part of any agenda tends to receive more attention than the last part.

**5.10.3** Council should endeavour to influence succession planning to Council membership so that at a future date at least one Council member of ARAC will have recent and relevant financial, accounting and auditing experience.

**5.10.4** Council should amend the Terms of Reference of ARAC to clarify that no non-members have a right to attend. Paragraphs 3.2.6 and 3.2.7 and Annex A appear to contain inconsistencies. Although it would rarely happen, best practice would be that the committee should be

empowered to meet without non-members at the meeting, or for particular agenda items.

**5.10.5** Council should amend either the Terms of Reference of ARAC or HEFCW's Committee Standing Orders to clearly empower the chair of ARAC to convene special meetings of ARAC without reference to the Secretary or to HEFCW's Executive.

## **5.11 The Nominations Committee**

The Nominations Committee, to which most Council members belong, does not meet physically. In essence this signifies that HEFCW is relying on all its Council members to informally put forward prospective committee members. Appointments to Council are made by the Welsh Office. We commend this approach and note that HEFCW has succeeded in attracting excellent co-opted committee members. See **6.11**.

### **Recommendations:**

**5.11.1** Even though appointments to Council are the prerogative of the Welsh Office, the Nominations Committee should engage more fully in the range of responsibilities usually associated with a Nominations Committee. The terms of reference of the Nominations Committee should contain an additional responsibility along the lines of:

*'Consider the future needs to refresh Council membership and, usually via HEFCW's Chair, endeavour to communicate these views to the appointments process.'*

**5.11.2** Council should consider arranging for the Nominations Committee to meet at least once a year face-to-face. Key items on the agenda of this meeting would be the Committee's annual assessment and its annual report to Council.

See also our recommendation at **5.13.2**.

## **5.12 The Regulation Committee**

We formed the view that internally this is a strong and effective committee, but we have concerns that its potential contribution is not being taken advantage of sufficiently by Council. We think this is likely to be symptomatic for other committees too (see **6.12**).

## **Recommendation:**

**5.12.1** Committee minutes, for most or all committees, should more clearly articulate what input a Committee is providing to Council (e.g. if it is to inform a Council decision) and there should be documented feedback from Council to each committee regarding Council's concerns and the influence the committee has had on Council deliberations (see also **5.1.2**, **5.5.2** and **5.9.1** and **5.9.2**).

## **5.13 Council succession planning**

In the last two years there has been a high turnover of Council members which has resulted in a Council relatively inexperienced about HEFCW. This must threaten Council's potential to be fully effective and add to the strain imposed on HEFCW's executive. For one reason or another some recent appointees have left. The given estimate that the time commitment is about 1.5 days per month is certainly not a generous assessment if a Council member is to take his or her duties seriously, and in some cases will certainly be an under-estimate. (see **6.13**)

Some refreshing of Council is, of course, always highly desirable. Our recommendations below should have regard to decisions to be made by the Welsh Government about HEFCW's medium to longer term future. We recognise that HEFCW may not exist beyond 2023 but there could be delay in the new PCET arrangements and it seems conceivable that Council members may be asked to serve on the governing body of the successor organisation. We suggest, therefore, that planning for succession is important.

## **Recommendations:**

**5.13.1** Since appointments to Council are for three years, renewable for a second three year term, and the full complement of Council is twelve members, we recommend that HEFCW endeavours to prevail upon the Welsh Office to introduce a phased succession planning process with the target that about two or three Council members should be replaced annually. To implement this it may be necessary for a while to appoint some new Council members for a first term other than three years renewable for a second three year term.

**5.13.2** Further to **5.13.1** (above) HEFCW's Nominations Committee should project forward to determine whether, without measures to mitigate the issue, there is likely to be an excessive turnover of Council members in close order in the future.

**5.13.3** Consideration should be given to inviting a prospective member to attend a Council meeting before accepting an appointment. This could enable a prospective member to decide whether membership of the

Council is appropriate before accepting an appointment and then possibly resigning early.

See also our recommendation at **5.10.3**.

## **5.14 Induction of new Council members**

We were impressed by the quality of these processes (see **6.14**) and make no recommendations about the induction process, although our recommendation at **5.13.3** is closely related.

# **6. Supporting detail**

## **6.1 Culture**

We considered HEFCW's culture during our work as we attended HEFCW Council and committee meetings and in our interviews with Council, committee members and with management. We also included culture in the survey.

In the HEFCW meetings we attended, we observed a relaxed collaborative style where meeting chairs encouraged everyone to contribute. Members of management who attend meetings seem at ease in expressing their views. This is not a characteristic of senior meetings in all organisations where management may feel inhibited by their chief executive from contributing. Our impression was that this culture is similar in Council and in both the committees we observed. We consider HEFCW's culture in this respect to be a real asset which should be nurtured. We think this enables HEFCW's committees to make a greater contribution to HEFCW that might otherwise be the case.

Overall, we find HEFCW's culture is a real strength for HEFCW and difficult to fault. We do however recommend, as discussed lower in this section and elsewhere in our report, that Council and management be more systematic in providing feedback from Council to its committees and in asking what it wants from committees.

Our survey included detailed sections on culture for both Council and committees. We also asked management questions relevant to culture.

### **Council**

The numerical responses to the survey section on Council culture were the most positive of the survey. Particularly positive were the Council views, supported only slightly less by the views of management, on openness in expressing their opinions, in feeling their views are listened to and valued and about the atmosphere of trust and constructive challenge. These numerical ratings were supported by the written comments.

Strengths were seen as

1. supportive and trusting
2. openness
3. engaging environment
4. inclusive
5. challenge being encouraged by the Chair
6. new members and observers encouraged to contribute and question, and
7. breadth of input from members.

These are indicative of a very strong Council culture. No concerns were reported by respondents.

Our other reservation about this uniformly good picture regards how Council effectively sets values and standards. Although Council's response to the statement '*Council effectively sets the values and standards, including ethical values, for the whole of HEFCW (Question D9)*' was a resounding 6.1 out of 7 we do not think this self-assessment was well supported by the narrative comments given in answer to D10 '*How does Council effectively set the values and standards, including ethical values, for the whole of HEFCW?*' For example, one response from Council was 'not sure we do'. Other responses suggested various ways this is done but each of them seemed to us to be indirect ways of setting values and standards. One comment from management reinforced our perception was '*not sure that they do*'.

Culture is such an important matter, we suggest a more systematic and comprehensive approach is needed to ensuring values, standards and good ethics are embedded.

### **Committees**

Both Council members and committee members were asked to complete the survey section on committee culture. The responses indicate that culture in committees is good. Committee members' assessment is only slightly less positive than Council's. Members praised many aspects of the culture including the openness, trust, willingness to listen, robust and constructive discussion and challenge. Significantly in view of the desire expressed by some committee members for feedback from the Council the lowest response was for D6 '*There are optimally appropriate relationships between the committee and Council*'. This attracted the lowest overall response from committee members 5.1 out of 7 - still a good rating. Two committee members responded with ratings of '2' with one commenting "*It is unclear to me what the relationship is between committee and Council (other than through the Chair, I presume)*". This, and other comments from committee members suggesting a desire for more feedback from Council suggest this is an important matter for Council to address.

One other matter which may be worth considering is in what capacity do some committee members take part: are they representatives of another organisation or are they expected to act independently?

## **Management**

There were impressive responses from management in the survey which also reinforced the picture of a strong healthy culture:

- 'I feel heard by Council'. The average response was 6.5 on a scale where 7 was strong agreement and 1 was strong disagreement.
- 'I am happy with the encouragement and support which management receives from Council' scored 6.3. and
- 'I am happy with the leadership and direction which management receive from Council' was rated 5.8.

These ratings were supported by narrative responses from management.

## **6.2 Transparency**

HEFCW's latest Annual Report addresses measures being taken to improve governance, for instance the new development of an assurance framework<sup>2</sup>, and also identifies a very small number of significant risk areas to be mitigated.<sup>3</sup> The Governance Statement is closely similar to earlier years, focussing on HEFCW's governance processes and generally not disclosing the results of them, the lessons that HEFCW has learnt or the new measures HEFCW have put in place. There is little information about the number of meetings of HEFCW's Council committees, although some, but we understand incomplete, information on dates of meetings is given on the HEFCW website.

HM Treasury's Corporate Governance Code, which HEFCW endeavours to conform to, to the extent it is applicable, states that 'The attendance record of individual board members should be disclosed in the governance statement and cover meetings of the board and its committees held in the period to which the resource accounts relate.'<sup>4</sup>

Despite the demands upon them, an analysis of attendance records of members at Council and Council Committee meetings shows that in 2017-18 and 2018-19 average attendance of members has been excellent at between 82% and 90%.

The published Governance Statement does not disclose the number of meetings of Council and its committees, nor the attendance record of members at these, which would be an impressive and informative set of data to disclose. Nor does it convey any real sense of how Council is involved in decision making, setting strategy, giving constructive challenge and in oversight.

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<sup>2</sup> *Op cit*, p26

<sup>3</sup> *Op cit*, p27.

<sup>4</sup> HM Treasury, Cabinet Office (April 2017) *Corporate Governance in Central Government Departments: Code of Good Practice*,

[[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/609903/PU2077\\_code\\_of\\_practice\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609903/PU2077_code_of_practice_2017.pdf), accessed 22<sup>nd</sup> October 2019], p22, para 4.6.

In general we consider HEFCW has adopted good practice in making information available on its website. We commend the detail in HEFCW's Publication Scheme.

For sound reasons of confidentiality HEFCW does not publish on its website full Council minutes or all the agenda papers for Council meetings. In such cases HEFCW uses the exemptions provided in the Freedom of Information Act. We consider, however, that currently it is difficult for members of the public to get a full appreciation of what HEFCW's Council does and of the decisions it makes; arguably a member of the public could reasonably expect more information. We feel that there are probably occasions when a little more could be said without giving away information which should rightly be kept confidential.

The Council agendas give headings for topics only. In our view this gives no sense of what is being discussed or what decision might be expected. While Council members have supporting papers with this and other information in detail, the public are generally not given this information. We note, for example, that for the September 2019 Council meeting there were no papers on HEFCW's website supporting either the 'For Discussion' or 'For approval without discussion' parts of the agenda.

In keeping with many other organisations, HEFCW's Annual Report refers to its satisfaction with the quality of its corporate governance together with measures being taken to improve corporate governance; but it is not informative about any detected weaknesses.

### **6.3 Challenge and the decision-making process**

Many of the questions in the survey were designed to enable any issues or concerns about challenge and decision making to surface. The responses suggest a reassuring culture of constructive challenge and openness with those present at Council and committee meetings encouraged to contribute and where their views are considered. Council members also expressed strong agreement with the statements C4 '*The quality and evidencing of Council decision making are optimally appropriate*' (6.0 out of 7) and C5 '*Council makes good decisions*' (6.4) Management concurred.

We feel, however, that Council decision making could be improved through a more systematic approach in the agenda papers and explicit linkage to the Scheme of Delegation (and reservation).

Unlike the private sector, HEFCW's Chief Executive (appointed by HEFCW's Council with the prior approval of the Minister) is also HEFCW's Accounting Officer and shares with Council direction and oversight responsibilities.<sup>5, 6</sup> Council must not

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<sup>5</sup> The Chief Executive, at p23 of the latest annual report states:

'As Accounting Officer of HEFCW, I am accountable to the Permanent Secretary of the Welsh Government as its Principal Accounting Officer for the discharge of my responsibility to maintain sound systems of governance, risk management and internal control. These systems support the achievement of our policies and strategic objectives, while safeguarding the public funds and HEFCW assets for which I am personally responsible, in accordance with the responsibilities

give the Chief Executive instructions which conflict with his duties as HEFCW's Accounting Officer.<sup>7</sup> Furthermore, the complexity of decision-making is compounded by the part played in direction and oversight by the Welsh Government and its tiers of accounting officers. Private sector companies and, arguably, universities have much more autonomy.

The issue arises as to how, and by whom, direction and oversight decisions are made. A review of agendas and minutes of Council and its Committees suggests that most meeting time is spent in rather general discussions that do not result in making or ratifying decisions on strategy, courses of action to be followed, or concluding on the quality of (say) risk management. Nevertheless our observations of Council and committee meetings suggest that this is partly a matter of how agendas and minutes are written (with an eye to public disclosure) rather than an absence of challenge and decision-making at these meetings.

HEFCW shares with any university the attributes of being a complex organization with many committees of the governing body. We are aware that in complex organizations such as universities, members of some of these committees include lay outside members representing the organizations' stakeholders who are often reluctant or unable to engage meaningfully in serious challenge and in materially influencing decision-making except in times of crisis. This leads to the executive tending to report to Council and its committees for discussion purposes leading to a virtual rubber stamping without amendment or rejection of decisions promoted by the executive, and a paucity of initiatives being proposed in the first instance by Council or its committees. HEFCW's Council members and committee members are sector specialists rather than lay people: not having lay members on its governing body, this tendency would be less justified for HEFCW than it would be for a university although for the latter it is also questionable.

After observing the November 2019 Council meeting and two committee meetings we consider the documentary evidence gives insufficient credit to Council and its committees for the level of challenge they give to the executive and their influence on decision-making. We observed an impressive degree of robust but constructive engagement on one matter with Council members being willing to differ in opinion from the perspective proposed by the executive. In spite of some clear differences of view the tone of discussion was positive and constructive throughout and the Chair was able to facilitate an outcome which was acceptable to everyone present. And we observed other matters about which committees made a significant impact on outcomes

We have some concerns with the terminology used for Council papers: in particular the term 'for approval without discussion' does not seem to us appropriate for

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assigned to me in the Welsh Government guidance Managing Welsh Public Money. I am responsible for ensuring that the public funds and assets assigned to HEFCW are used economically, efficiently and effectively. I also acknowledge my responsibilities in respect of the funds provided to HEFCW, which are allocated to higher and further education providers and others for education, research and associated purposes.'

<sup>6</sup> WGSB Framework Document: Higher Education Funding Council for Wales (2014)

[[https://www.hefcw.ac.uk/documents/council\\_and\\_committees/council\\_and\\_committees/WGSB%20Framework%20Document%20-%20FINAL%20\(Sept%202014\).pdf](https://www.hefcw.ac.uk/documents/council_and_committees/council_and_committees/WGSB%20Framework%20Document%20-%20FINAL%20(Sept%202014).pdf), accessed 22<sup>nd</sup> October 2019], p13.

<sup>7</sup> Framework document, p. 12, para 2.2.19.

HEFCW's highest level decision-making body. We appreciate that in reality Council members are expected to have considered such matters before the meeting and may ask that a matter is discussed before approval is given but with full agendas there may be an incentive, in the interests of time, to let matters be approved when a discussion, possibly brief, and formal decision could be preferable.

Our recommendations in **5.3** are intended to sharpen the decision-making focus by members of Council and of Council's committees.

#### **6.4 Setting and monitoring strategy**

With respect to setting strategy, HEFCW periodically publishes its strategy, most recently in the document 'Corporate Strategy 2017-2020'. This strategy runs until March 2020. Management and Council are currently considering strategy for 2020-2023. As the Welsh Government intends a new PCET oversight body to come into being, possibly in April 2023, this could be HEFCW's last strategy.

The survey responses give an impression of strategy setting and monitoring being done well. There was fairly strong agreement with a rating of 6 out of 7 to C7 '*Development and monitoring of strategy by Council is effective*' and slightly lower agreement with C10 '*Council effectively monitors organisational performance*'.

We also looked at strategy setting and monitoring as evidenced by Council minutes, the notes of a workshop, and in our observation of the Council meeting in November 2019. Council considered HEFCW's next corporate strategy at its workshop in May 2019. A note of the discussions confirmed that Council provided input on changes it would like to see from the 2017-2020 corporate strategy and recorded that a first draft 2020-2023 corporate strategy would be prepared 'as soon as possible, taking on board the steers from today's discussion'. The minutes record that a draft 2020-2023 corporate strategy document was duly considered by Council at its September meeting and provided several steers to management.

Following those considerations a revised draft was on the agenda for discussion at Council's November meeting at agenda item 10, which we attended as observers. The recommendation invited Council to review the updated draft. In that meeting discussions on a preceding agenda item took longer than scheduled and there was little remaining time for discussion of strategy. According to our recollection and notes, the Chair told members that Council had had several looks at strategy and was content that Council did not discuss strategy on this occasion. There was no dissent to this. The draft Council minute, however, (10.1) says something different: "*Council reviewed a revised draft of HEFCW's Corporate Strategy 2020-21 to 2022-23 following the steers it had provided at the September meeting. Resolved: The Council approved the latest draft of the Corporate Strategy 2020-23 and that it be taken forward as set out in the paper.*"

We have seen the meeting note of the May workshop which shows that Council had considered the new strategy in the previous Council meeting. but we did not see any further evidence of consideration of strategy in the Council minutes in 2019. We

assume that the new Corporate Strategy will be fully discussed at the January 2020 Council meeting before approval in the March meeting.

Beyond setting strategy, there is the requirement to monitor progress against the corporate strategy. The annual Operational Plan sets out the activities to be undertaken over a planning year to achieve the corporate strategy themes. This is maintained during the year with the final outcomes detailed at the end of the year. All this is disclosed on HEFCW's website except that, understandably, progress during the year is not made public until after the end of the year. We commend HEFCW for this transparency and the clarity of the public information on strategy and its achievement.

The minutes of the November 2018 Council meeting record that Council has considered Corporate Strategy 2017-20 progress report and analysis of performance, apparently in some detail. The first reference in 2019 in the Council minutes to monitoring progress against strategy was in the May 2019 Council minutes (item 11). These stated that 'quarterly progress reports on the Operational Plan would be presented to the Council for discussion'. A progress report on activities in HEFCW's Operational Plan 2019-20 was provided to Council in September 2019 (item 24) in the 'For Information' part of the agenda.

The traffic lights approach facilitates review of progress and we note that the status of all the issues was green apart from one amber, the cause of which was apparently due to external factors. The September minutes contain no suggestion of the progress report actually having been considered by Council. While we commend HEFCW for the clarity of the progress report, we have a concern that it appeared from the minutes not to have been actively discussed.

Given the apparent satisfactory progress we understand the possible temptation to table such a matter in the 'For information' section of the agenda. In our view, however, monitoring progress against strategy is a key responsibility of any governing body and we agree with the May Council minute that such progress reports be included each quarter in the 'For discussion' part of the agenda and that progress should be actively considered by Council.

The Annual Report provides information both about the corporate strategy objectives and a performance analysis. Quoting from the Annual Report under the heading 'Performance Analysis', the latter 'presents some of the key activities we undertook during the year in support of our corporate strategy'. We suggest this analysis lacks specificity and it seems an opportunity not taken that the report does not highlight what was good progress against the strategy objectives with satisfactory progress against all but one task. We note that this information is provided in full in the 41 page Operational Plan published on HEFCW's website but we suggest a summary of progress in relation to each of the 12 Corporate Performance Outcomes could also be provided in the Annual Report.

The November Council meeting (item 14) invited Council to 'review and comment' on the National Measures report 2016/17 and 2017/18 and 'receive and note' the final report on the former corporate strategy targets. There was only limited time for

Council to discuss this item owing to a previous item which had overran but one Council member observed that 50% of last year's targets had been met.

Council papers provide evidence that the Corporate Strategy document informs and influences Council's discussions. For example Agenda item 10 HEFCW/19/78 in the September 'for discussion' papers states 'HEFCW's Corporate Strategy 2017-2020 identified that we will influence higher education with evidence-based advice and strong partnership working. Consequently we have developed National Measures for Higher Education performance, to monitor the performance of higher education providers from 2018/19'.

## **6.5 HEFCW's governance documents**

As part of our review we considered the following HEFCW governance documents:

- Framework Document (mandated by the Welsh Government)
- HEFCW's Remit Letter (from Welsh Government)
- Council Standing Orders
- Council papers
- Committee papers
- Scheme of Delegation
- Financial Regulations
- Code of Conduct for Members of HEFCW
- Committee Standing Orders
- Annual Report
- Corporate Strategy and Operational Plan
- HEFCW well-being statement
- Committee terms of reference
- Council and committee member appointment letters
- Whistleblowing Procedure and Policy
- HEFCW Annual Regulatory Report 2017/18

Overall, with the exception of the Framework Document over which HEFCW has little influence and which is significantly out of date, we commend HEFCW for the quality and comprehensiveness of its governance documents but we have some suggestions to make them more relevant to, and used by, Council. We were pleased to see clear evidence in Council minutes of many of these documents being kept under review.

We have, however, made recommendations elsewhere in this report on Council papers and minutes, the Scheme of Delegation, Council Standing Orders, the Code of Practice, the Annual Report and the Corporate Strategy and we have the following supporting comments.

We suggest the Scheme of Delegation be carefully reviewed to ensure there are no gaps between which powers are reserved to Council and the powers delegated to the chair and to the Chief Executive (CE). One way to ensure no gaps and no

ambiguity would be to delegate to the CE everything which is not specifically delegated to the chair or reserved to Council. This should help to ensure that the Scheme of Delegation is as appropriate as possible to HEFCW's needs and that there are no gaps in what is or should be delegated and any ambiguity is minimised.

As noted above, responses from our online survey suggested that outside committee members would appreciate feedback from Council on its concerns and how Council has taken notice of the committees' input and how their input has had on Council 'steers' and decisions. This should establish better two way communication between Council and the committees, help the committees focus their input and hopefully ensure committee members feel as valued as practicable. We noted though that in the Council meeting we observed there was very little comment or discussion from Council following the oral reports given by committee chairs. We accept however that there were other items on the agenda to which committees had contributed.

We suggest the decision section of Council Standing Orders should say that all decisions should be made in accordance with the Scheme of Delegation. The Recommendation part of the Annex to SOs setting out the structure of Council papers should also include whether the agreement sought is necessitated

- (i) because it would be a decision required by Council as one of reserved powers which cannot be delegated,
- (ii) whether Council's approval is requested because the chief executive or chair requests it or
- (iii) for some other reason.

Where the agenda item is requesting authority to be delegated to the CE the paper should state

- (i) whether the CE is seeking additional authority because it is beyond his delegated authority or
- (ii) for some other reason.

This should help to sharpen further Council's decision making and ensure they keep in mind which decisions require their approval and what has been delegated to the chair and CE. It should also help to ensure that the Scheme of Delegation is as fit for purpose as possible.

We consider it unfortunate that the Welsh Government has not revised the Framework Document as this has been the prime governance document for HEFCW since 2014. It is out of date because it predates the HE Act (Wales) 2015, which changed HEFCW's role from being primarily a funder to a Regulator. We understand there have been a number of attempts by the Welsh Government sponsor team to update the framework document including a review, which started in 2017, which identified the required changes across document.

The fact that it is out of date may be responsible for some of the lack of clarity which has given rise to some of our recommendations. As it seems likely that HEFCW will exist at least until 2023, we hope the Welsh Government will be able to revise the document in 2020.

## 6.6 Welsh Government Citizen Centred Governance Principles

Our Proposal for carrying out this governance review set out to consider, inter alia, your governance processes and arrangements with reference to the Welsh Government's Citizen-Centred Governance Principles:

1. putting the citizen first;
2. knowing who does what and why;
3. engaging with others;
4. living Public Service Values (rooted in the Nolan principles);
5. fostering innovative delivery;
6. being a learning organisation; and
7. achieving value for money.

We did so because the WGSB Framework Document: Higher Education Funding Council For Wales stated 'HEFCW must ensure that, in carrying out its functions, it does so in a way that is consistent' with the these principles. The Framework Document refers to the Welsh Government Managing Welsh Public Money as a source of these Principles. The Framework Document however was issued in 2014 and the current edition of Managing Welsh Public Money, dated January 2016, does not refer to these principles by name but nevertheless lists the seven principles and requires each public service organisation to include the principles in its governance framework. As far as we can establish these principles still apply to bodies such as HEFCW.

Our impression, however, is that HEFCW appears not apply these principles explicitly.

Council responded to our survey statement B5. *'Where relevant, Council suitably considers and applies the Welsh Government Citizen Centred Governance Principles'* with an average 5.6 out of 7. Committee members gave a slightly lower score of 4.9 to a similar question.

Although these are satisfactory scores we also asked *'Have you any comments on how HEFCW applies and lives the Welsh Government Citizen Centred Governance Principles?'* The responses suggest a more nuanced picture as we have described in the separate Survey Report.

The obvious question we had to consider is 'should Council and committee members all be familiar with these principles?' Council Standing Orders<sup>8</sup> provide that 'discussions and decisions at Council meetings shall take place in accordance with the principles set out in the *Code of Practice for Members of the Higher Education Funding Council for Wales*, and in accordance with the sustainable development principle of the *Well-being of Future Generations Act 2015*'. The Code of Practice refers to the 'Seven Principles of Public Life (*Standards in Public Life: First Report of the Committee on Standards in Public Life*. Volume 1: Report. CM 2850-I)' which are

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<sup>8</sup> HEFCW Standing Orders (8.2)

more commonly known as the Nolan Principles. However, the Code of Practice, does not refer to the Citizen Centred Governance Principles.

HEFCW takes its obligations under the Well-being of Future Generations Act seriously; it published a Well-being Statement<sup>9</sup> in 2018, HEFCW's Well-being objectives are built into HEFCW's Operational Plan 2108-2019 and HEFCW reports on progress towards the objectives in its Annual Report.

Our understanding is that Welsh public bodies are required to have regard to three sets of requirements:

1. The Nolan Principles
2. Welsh Government Citizen Centred Governance Principles and
3. Well-being of Future Generations Act 2015

This is arguably somewhat messy as the requirements overlap to some extent. It seems surprising that the 2016 edition of *Managing Welsh Public Money*, which drives the requirement to apply the Citizen Centred Governance Principles, makes no reference to the need to achieve the goals of the Well-being of Future Generations Act enacted in 2015.

## 6.7 Compliance with best practice corporate governance

As part of our governance review we took into account best practice corporate governance from the public and listed company sectors. We note that the Head of Internal Audit annually produces a report of compliance with the Framework Document; we did not perform a similar compliance exercise with any single authority or source of guidance. Instead, we make the following comments and suggestions based on our familiarity with the authorities and guidance referenced below and what we consider relevant for HEFCW.

At its Workshop in November 2018, HEFCW's Council agreed that, subject to the outcomes of this governance Review, it would take a fresh look at the Council's governance arrangements against the HM Treasury Code, and combine that with a look at other, more recent corporate governance guidance, including the Committee of University Chairs' (CUC) *The Higher Education Code of Governance* (revised edition June 2018); *On Board: A Guide for Board Members of Public Bodies in Scotland* (March 2017); and the FRC's *UK Corporate Governance Code* (July 2018). We were told that HEFCW evaluates itself against the 'latest' HM Treasury Corporate Governance Code of 2011, but this has been superseded by the 2017 update.<sup>10</sup>

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<sup>9</sup> HEFCW well-being statement

[https://www.hefcw.ac.uk/documents/about\\_he\\_in\\_wales/WG\\_priorities\\_and\\_policies/HEFCW%20Well-being%20statement%20revised%202018%20English.pdf](https://www.hefcw.ac.uk/documents/about_he_in_wales/WG_priorities_and_policies/HEFCW%20Well-being%20statement%20revised%202018%20English.pdf)

<sup>10</sup> HM Treasury, Cabinet Office (April 2017) *Corporate Governance in Central Government Departments: Code of Good Practice*,

[[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/609903/PU2077\\_code\\_of\\_practice\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609903/PU2077_code_of_practice_2017.pdf), accessed 22<sup>nd</sup> October 2019].

There is no Code of Best Practice for Corporate Governance designed specifically for Welsh Government Sponsored Bodies. The current 2014 Framework Document for HEFCW<sup>11</sup> says WGSB boards are accountable to Ministers for achieving the defined objectives, ensuring high quality corporate governance and for oversight of the WGSB executive, including the Chief Executive. While no text within the Framework mentions a specific corporate governance Code to be followed, its Annex 2 refers to the 2011 *Corporate Governance in Central Government Departments: Code of Good Practice*. The latter was replaced in 2017<sup>12</sup> and is supported by a further guidance publication.<sup>13</sup>

HEFCW continues to reference into the replaced 2011 Code. HEFCW's 2018-19 Annual Report claims compliance with the *Corporate Governance Code*, stating:

'We are of the view that our processes continue to be compliant with the Corporate Governance Code to the extent relevant to a Welsh Government Sponsored Body.'

HEFCW also states it complies with HM Treasury's *Audit Committee Handbook*.

'The [Audit and Risk Assurance] Committee was satisfied that, overall, it was operating in line with accepted best practice for audit committees.'<sup>14</sup>

An earlier version of this Handbook is also listed in Annex 2 of the Framework document: it was replaced by HM Treasury with an *Audit and Risk Assurance Handbook* by HM Treasury in 2013 and again in 2016.<sup>15</sup> It is important to use the latest versions of these guidelines: for instance, the 2016 *Audit and Risk Assurance Handbook* contains a section on cyber security.

HEFCW's Audit and Risk Assurance Committee annually benchmarks its performance against the National Audit Office's *Audit Committee Self-Assessment Checklist*<sup>16</sup> which is based on the Audit Committee Handbook. There is a later

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<sup>11</sup> WGSB Framework Document: Higher Education Funding Council for Wales (2014) [[https://www.hefcw.ac.uk/documents/council\\_and\\_committees/council\\_and\\_committees/WGSB%20Framework%20Document%20-%20FINAL%20\(Sept%202014\).pdf](https://www.hefcw.ac.uk/documents/council_and_committees/council_and_committees/WGSB%20Framework%20Document%20-%20FINAL%20(Sept%202014).pdf), accessed 22<sup>nd</sup> October 2019], p2.

<sup>12</sup> HM Treasury, Cabinet Office (April 2017) *Corporate Governance in Central Government Departments: Code of Good Practice*, [[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/609903/PU2077\\_code\\_of\\_practice\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609903/PU2077_code_of_practice_2017.pdf), accessed 22<sup>nd</sup> October 2019].

<sup>13</sup> HM Treasury, Cabinet Office (April 2017) *Corporate Governance in Central Government Departments: Code of Good Practice – Guidance Note*, [[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/609668/PU2076\\_corporate\\_governance\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609668/PU2076_corporate_governance_guidance.pdf)]

<sup>14</sup> HEFCW's *Annual Report and Accounts for the year ended 31 March 2019*, pps 23-24

<sup>15</sup> Replaced by HM Treasury (March 2016) *Audit and Risk Assurance Committee Handbook* [[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/512760/PU1934\\_Audit\\_committee\\_handbook.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/512760/PU1934_Audit_committee_handbook.pdf), accessed 22<sup>nd</sup> October 2019].

<sup>16</sup> National Audit Office (September 2017) *Audit Committee Self-Assessment Checklist* [<https://www.nao.org.uk/report/audit-committee-self-assessment-checklist-2-2/>, accessed 23<sup>rd</sup> October 2019].

checklist based on the current *Audit and Risk Assurance Committee Handbook*<sup>17</sup> which ARAC used for the first time in December 2019.

At its Workshop in November 2018 the Council agreed that, subject to the outcomes of this governance Review, it would take a fresh look at the Council's governance arrangements against the HM Treasury Code, and combine that with a look at other, more recent corporate governance guidance, including the Committee of University Chairs' (CUC) *The Higher Education Code of Governance* (revised edition June 2018); *On Board: A Guide for Board Members of Public Bodies in Scotland* (March 2017); and FRC's *UK Corporate Governance Code* (July 2018).

We asked the Council secretary whether his role allowed him to perform the duties and functions set out in the FRC Guidance on Board Effectiveness on 'board support and the role of the company secretary'. He replied that he does other than he has no role in acting as a communication link with Council on matters of concern raised by staff about conduct, financial improprieties or other (similar) matters.

The FRC's *UK Corporate Governance Code* has a provision (provision 6)

There should be a means for the workforce to raise concerns in confidence and – if they wish – anonymously. The board should routinely review this and the reports arising from its operation. It should ensure that arrangements are in place for the proportionate and independent investigation of such matters and for follow-up action.

We note that HEFCW's Whistleblowing Policy provides that the 'Head of Corporate Services will be required to submit to Management Board and the HR Committee, an annual report on its application.' We suggest that it be amended so as to be equivalent in effect to the FRC provision and involve Council, and possibly ARAC on behalf of Council, in oversight of the means for staff to raise concerns. If staff do not raise any concerns that fact should be communicated to Council. We further suggest that any Council agenda item on this matter should recommend Council discussion and not be on the 'For information' part of the agenda.

In the **Introduction (Section 1)** to this report we list the principal generally accepted sources of reference on corporate governance which we have used in our review.

## **6.8 Deputy Chair and Lead Non-Executive Council Member**

The Deputy Chair receives no additional fee for that role.

To the extent that it is applicable, HEFCW has adopted the *Corporate Governance in Central Government Departments - Code of Good Practice*. Both the 2011 and 2017 versions of this, and the associated *Guidance Note* have many references to the role of a Lead Non-Executive Board Member (see **Annex 7.4**). HEFCW plans to review

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<sup>17</sup> National Audit Office (November 2017) *Audit and Risk Assurance Committee Effectiveness Checklist* [[https://www.nao.org.uk/wp-content/uploads/2012/10/Self\\_Assessment\\_Checklist.pdf](https://www.nao.org.uk/wp-content/uploads/2012/10/Self_Assessment_Checklist.pdf), accessed 22nd October 2019].

the published best practices that it benchmarks its corporate governance against and one of those identified by HEFCW is the FRC's *UK Corporate Governance Code* which also regards the equivalent role of Senior Independent Director an essential element of good corporate governance (see **Annex 7.3**).

While HEFCW has no Lead Non-Executive Council Member, HEFCW has designated one of its Council members to be Council's Deputy Chair. There is no requirement in HEFCW's Framework Document to have either a Deputy Chair or a Lead Non-Executive Board Member, but it is clearly sensible to have established fallback arrangements for chairing Council and Council meetings in the absence of the Chair.

*Corporate Governance in Central Government Departments - Code of Good Practice* envisages a network of Lead Non-Executive Board Members at all levels of government with some of the duties of these members relating to their interfaces with other equivalent members at higher and parallel levels of government. But the principal duties stated in this *Code* for these members are internal to the body overseen by the Council they belong to. We have summarised the relevant section of the *Code* below, after editing it to be more applicable to HEFCW. We accept that HEFCW may determine that not every one of these duties need be within the remit of a HEFCW Lead Non-Executive Council Member.

Duties of a Lead Non-Executive Council Member:

1. Support the Chair of Council to help him or her carry out the role effectively, particularly given the competing demands on the Chair's time.
2. Meet regularly with other Council members to ensure their views are understood and given due weight and that Council's chair is aware of any concerns.
3. Ensure that the non-executive Council members meet alone with the Sponsoring Department from time to time. The Lead Non-Executive Council member will seek to support the Sponsoring Department.
4. Liaise with the Sponsoring Department's Lead Non-Executive.
5. Ensure that the non-executive Council members collectively meet the Chair of Council alone from time to time.
6. Play an active role in the cross-government network of lead non-executive board members.
7. Along with Council's Chair, agree the agendas for Council meetings proposed by the Secretary, ensuring all relevant items are brought to Council's attention.
8. Support the Chair to ensure a Council effectiveness evaluation is carried out annually, and with independent input at least once every three years.

9. Ensure the Chair acts on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of Council and, where appropriate, recommending new members be sought for Council (subject to the open appointments process) or seeking the resignation of members.

**Annex 7.3** shows how the FRC's *UK Corporate Governance Code* and its supporting *Guidance* summarise the role. **Annex 7.4** shows HM Treasury's specification of this role.

As currently accepted good practice in both government and listed companies is to have a lead independent member we think HEFCW should do so too.

## 6.9 Council and committee structure

We recognise that board committee size is allowed to be low even for FTSE 100 and FTSE 250 companies. For instance, the FRC's *UK Corporate Governance Code* allows that FTSE 250 companies may have an audit committee of just two members and FTSE 100 just three members.

All Council committees review their own effectiveness annually.

At eight, the number of Council committees is larger than in most organisations but this can be an effective way for Council to direct and oversee the Executive.<sup>18</sup> Except for the Nominations Committee, representation of Council members on committees is low at two or three members each: this is sensible in view of the intended time commitment of the twelve Council members, and a greater time commitment would be unrealistic. To some extent the small number of Council members on most committees is addressed by co-option to committee membership of non-Council members (as with the Audit and Risk Assurance Committee and Regulation Committee) and by the attendance at meetings of HEFCW executives and observers. We think this structure is appropriate for HEFCW's circumstances.

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<sup>18</sup> The role of Council is set out in the Framework document on p12 at 2.2.18 *et seq*, viz:

'2.2.18 The role of the Council is to:

- provide effective leadership; defining and developing strategic direction and setting challenging objectives;
- promote high standards of public finance, upholding the principles of regularity, propriety and value for money;
- ensure that HEFCW's activities are conducted efficiently and effectively; and
- monitor performance to ensure that HEFCW fully meets its aims, objectives and performance targets.

'2.2.19 To do this the Council must ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control. It must establish an Audit Committee chaired by a non-executive member (but not the Chair) to provide it with independent advice. The Council is expected to assure itself of the effectiveness of the internal control and risk management systems.'

We noted that the terms and conditions attached to appointment letters for Council members make no reference to committees and the need for most Council members to participate on one or more committees.

In our survey, several independent members of committees commented that they would like more understanding about Council concerns and another would like feedback on how the committee's feedback has shaped Council decisions. Our observations of meetings suggested that information flow is one way from committee to Council.

We have commented elsewhere that we think the committees are a strength of HEFCW's governance. The survey indicated good satisfaction among both Council and independent committee members with how the committees work albeit with a few areas where other improvements could be considered.

## **6.10 The Audit and Risk Assurance Committee**

The survey asked Council members if they felt:

- assured that HEFCW always operates within its risk appetite,
- that Council fully understands all the significant risks facing HEFCW
- that all these risks are managed, mitigated or transferred so that residual risk is within Council's set risk tolerance, and
- assured with regard to its responsibilities for compliance, regulation and risk management.

The response ratings for each were 6.6 suggesting strong agreement. Management also agreed but not quite so strongly. As risk management was not part of our remit we have not attempted to second guess these views. The principle source for Council of assurance in these areas is surely the Audit and Risk Assurance Committee (ARAC).

ARAC has two Council members and three co-opted (independent) members. This co-option is the way HEFCW has ensured ARAC has recent and relevant financial experience. Usually, but not necessarily, it would be the committee's chair who possessed this experience, and possibly other committee members too. It would be preferable that this was achieved through the Council members on ARAC who, nevertheless, are excellently experienced to oversee institutional risk and assurances which have been identified as areas that need more focus by ARAC and which ARAC is well placed to address, not least if HEFCW assumes responsibility for the Further Education sector in Wales. Co-opted members' effectiveness is hampered to some extent as they are a step removed from Council business and the business of other Council committees, although these co-optees (unlike the co-optees on other Council committees) do have access via the Extranet to the unredacted versions of Council minutes.

We considered the need for so much co-option. The UK Corporate Governance Code<sup>19</sup> allows even a FTSE 100 company to have just three members of its audit committee and a FTSE 250 to have just two members. We note that HEFCW is planning to consider its future corporate governance having regard, *inter alia*, to this Code. We have a remaining concern that ARAC and HEFCW rely heavily on its co-opted ARAC committee members for financial input.

ARAC is concerned with both institutional assurance and also with the oversight of HEFCW's internal accounting, auditing and risk management. Of the committee co-optees only ARAC co-optees have access to unredacted Council papers via the extranet.

In addition to its self-assessment overview annually using the NAO's checklist<sup>20</sup>, which relates to the conventional role of an ARAC committee. ARAC conducts a more comprehensive self-assessment effectiveness review exercise every three years against the requirements and recommendations in HM Treasury's *Audit Committee Handbook*. The latter last took place in October 2017 and the former in December 2018.

The agenda paper and minute for the 2018 annual self-assessments are thorough and ARAC's meeting on 4<sup>th</sup> December 2019 spent significant time carefully debating their 2019 self-assessment. The agenda paper includes a summary of the Chair's one-to-one discussion with ARAC members, a reflection on the skills base of ARAC's membership, and a review of the Committee's Terms of Reference and Annual Forward Plan.

In December 2018 ARAC's Chair reported to the committee *inter alia* that "all members say that the Committee operates very efficiently and effectively", that "there is a good balance of skills and experience amongst the members", and that the innovation of "the (controversial) fourth meeting has proved useful" in spreading the workload across meetings. The Chair's report suggested a slight level of concern that "the number of executives at the meetings tends to be high given the number of committee members, but it is recognised that this offers both benefits to the Committee and staff development opportunities for the executives." He also articulated a "need to spread internal audit reports more evenly throughout the year".

The Committee's concerns about meetings being dominated by HEFCW's executives in attendance who are not members is a common concern of audit committees. Generally, the benefit to the committee outweighs the drawbacks. ARAC's Terms of Reference at 3.2.3 list five HEFCW officers as attendees and 'other HEFCW staff, at the discretion of the Committee':

"The following HEFCW officers shall normally attend meetings of the Committee:

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<sup>19</sup> The Financial Reporting Council (2018) *The UK Corporate Governance Code* [<https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code>, accessed 23<sup>rd</sup> October 2019], p10, Provision 24.

<sup>20</sup> National Audit Office (September 2017) *Audit Committee Self-Assessment Checklist* [<https://www.nao.org.uk/report/audit-committee-self-assessment-checklist-2-2/>, accessed 23<sup>rd</sup> October 2019].

- Chief Executive, as Accounting Officer
- Director of Institutional Engagement
- Head of Internal Audit
- Head of Corporate Services
- Council Secretary
- Other HEFCW staff, at the discretion of the Committee. “

Other than HEFCW executives in attendance, two named Wales Audit Officers and a member of the HEFCW sponsor team are three non-ARAC members who, *prima facie*, appear to have been given by the Terms of Reference the *right* to attend ARAC meetings, but 3.2.7 of ARAC’s Terms of Reference states that “the Committee may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters.” It is regarded as best practice corporate governance that nobody other than its members has a right to attend audit committee meetings: that includes other members of Council. The chief executive is *ex officio* a member of Council.

The Audit and Risk Assurance Committee’s Terms of Reference are generally excellent. They state that ARAC will ‘normally’ meet four times a year, so a lesser or greater number of meetings is not precluded, depending on need. ARAC’s 2018 self-assessment noted the requirement for ARAC to have knowledge / skills / experience in accounting, risk management, internal and external audit and in technical or specialist issues pertinent to the organisation’s business and further noted that ARAC’s Terms of Reference included relatively little detail about its role with respect to its oversight of institutional risk and assurances compared with other responsibilities - for example, on HEFCW’s corporate governance arrangements, or on internal and external audit.

3.2.1 of ARAC’s Terms of Reference states that the Committee shall comprise five members, including two members of the Council and three co-opted non-Council members. One of the Council members will chair the Committee and the other Council member will be the Deputy Chair. ARAC conforms to HM Treasury Corporate Governance Code with respect to the following:

‘The board and accounting officer should be supported by an audit and risk assurance committee, comprising at least three members. The chair of the committee should be a non-executive board member of the board with relevant experience. There should be at least one other non-executive board member of the board on the committee; the committee may also choose to seek further non-executive membership from non-members of the board in order to ensure an appropriate level of skills and experience. At least one, but preferably more, of these committee members should have recent and relevant financial experience.’<sup>21</sup>

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<sup>21</sup> HM Treasury, Cabinet Office (April 2017) *Corporate Governance in Central Government Departments: Code of Good Practice*, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/609903/PU2077\_code\_of\_practice\_2017.pdf, accessed 22<sup>nd</sup> October 2019], p236, para 5.9.

3.2.8 of ARAC's Terms of Reference states that "the Council Secretary shall service the Committee", and 3.1 that "the standard HEFCW Committee Standing Orders shall apply." These Committee Standing Orders imply not very clearly at 2.2 and 2.3 that the Secretary routinely convenes meetings of ARAC, that the Committee's Chair may ask the Secretary to convene a special meeting and that Council or the Accounting Officer may ask the Committee to convene further meetings. What is missing from this is a clear understanding that in extreme cases if necessary the Chair of ARAC should himself or herself be empowered to convene an ARAC meeting without reference to the Secretary or to any other members of the Executive.

We were not convinced that the risks of inaccurate accounting and avoidable financial losses are necessarily being mitigated sufficiently or overseen sufficiently by ARAC. We were pleased to learn that HEFCW's accounting function undertakes an annual control risk self-assessment, and we are impressed by HEFCW's internal audit function which audits cash management annually. Although the scope of our work does not allow us to conclude definitively, we have the impression that there is scope for undetected, avoidable financial losses occurring. Not least because of the difference between universities' year ends and HEFCW's year-end, there is no chance that the bodies HEFCW funds would notice discrepancies between what they have received from HEFCW and what HEFCW reports in HEFCW's financial statements. Hence our advice that ARAC should focus more on financial and accounting risks and on the quality of internal and external audit.

The Head of Internal Audit provides a valuable service to ARAC within the scope of ARAC's role to oversee internal HEFCW risks, *viz*:

- ARAC gives a formal opinion to Council on the audited accounts and the Governance Statement. The Head of Internal Audit is facilitating the development of an assurance framework to support these assurances.
- ARAC monitors the management of key risks: the Head of Internal Audit provides assurance on risk management as part of each internal audit.
- ARAC advises Council on the provision of internal audit services including approving the internal audit strategy and annual internal audit plans. The three-year strategy and the annual internal audit plan are approved in June each year and any subsequent changes will also be approved. Plans are reviewed during year and amended if required with proposed changes reported to ARAC.
- ARAC considers the internal audit annual statement of assurance and all internal audit engagement reports. The Head of Internal Audit provides an assurance update report to three of the four ARAC meetings and an annual report to the June meeting.

We note that additionally ARAC provides assurance to HEFCW on its obligations regarding institutional financial management under the Higher Education (Wales) Act 2015 as described in HEFCW's Annual Regulatory Report.

## 6.11 The Nomination Committee

The Nominations Committee does not meet formally and in a sense is a virtual committee. Its larger size demonstrates HEFCW's intention to solicit as much input as possible from Council members about likely candidates to be invited to apply for Council committee vacancies. It appears that the duties of the Nominations Committee have not been fleshed out as comprehensively as would be the case in most other organizations.

## 6.12 The Regulation Committee

The Regulation Committee is a relatively new Committee which held its first meeting in December 2018. The Committee is an advisory committee to HEFCW Council with no executive powers. Its terms of reference were agreed at HEFCW Council's March 2018 meeting. Its main role is to advise on the implementation of HEFCW's regulatory responsibilities under the HE (Wales) Act 2015 this includes the vital role of advising HEFCW on its HEFCW's Annual Regulatory Report and development of, and monitoring of institutions' compliance with, Fee and Access Plans. There is a link in this respect with the work of the Audit and Risk Assurance Committee.

We attended the Committee meeting on 15 October 2019. Three Council members were present, including the Committee chair and the Chief Executive, and two independent committee members. The other independent member and the NUS President had given their apologies.

The agenda is well structured. In common with the procedure for Council papers, each agenda item is supported by an explanatory paper setting out the issue including *inter alia* why the Committee is being asked to consider the matter (the rationale), what the Committee is asked to do and other relevant issues such as whether Council will be asked to make a decision on the matter.

The meeting itself seemed to be highly effective. Those present appeared well prepared and familiar with the matters discussed, one independent member particularly so. These members are also clearly hugely knowledgeable and their contribution must be very useful to HEFCW. The tone of the meeting was constructive throughout with excellent engagement of members and management. The meeting was well chaired and the chair helpfully provided a summary of the discussion at the end of each item and would also ask management if the Committee had provided enough input on an item. One important contribution was to challenge whether guidance and instructions to institutions are becoming over long. We were impressed that, throughout the meeting, there was considerable focus on 'outcomes' of higher education and the parts played by HEFCW and institutions.

The draft minute of the meeting is comprehensive apart from not referring at all to Council other than stating which Council members attended. We think the minutes were correct in this as we did not recall the committee discussing Council wants or steers in any detail. We would, however, have liked the minutes to reflect, where it happens, any discussion on what influence the committee might wish to have, or has

had, on Council. For example was the committee wanting to give a steer or influence a decision and, subsequently, what did Council decide?

The Committee provided a considerable amount of input on a number of matters. We were interested to ascertain what influence the Committee was having on Council. Item 6 on the Committee agenda for its November meeting was about guidance to institutions applying for fee and access plans. The explanatory paper stated that Council would 'be invited to approve the fee and access plan guidance at its meeting in November' and it was anticipated HEFCW would publish the fee and access plan guidance in December.

The corresponding explanatory paper (item 11) for the November Council meeting did not invite Council to approve the guidance. Instead Council was asked to 'discuss the fee and access plan pro-forma, and delegate authority to the Council Chair, the Chair of the Regulation Committee, and the Chief Executive to approve the guidance.

Owing to lack of time in the Council meeting, caused by an issue which overran, there was very little discussion. Similarly there was very little discussion on Council agenda item 12 on monitoring and evaluation of fee and access plans. The November Council meeting provided little if any material about its deliberations which the Regulation Committee Chair could take back to the Committee notwithstanding that the Council agenda had two substantive items for discussion on which the Committee had contributed.

### **6.13 Council succession planning**

Council's Chair and Deputy Chair have served on the Council since 2008 and 2013 respectively. Since December 2017 there have been nine new appointments to Council three of whom have since left. Together with the Chief Executive (who is *ex officio* a Council member) there are ten members of Council with a maximum permitted by the Framework Document of twelve. There will be a new Chair from May 2020. Clearly, there has been recently a high level of turnover of Council members which risks its effectiveness and that of its committees. If some new Council members could be appointed for one or two years in the first instance, this could set up an orderly rotation of Council members over time.

Appointments to Council are made by the Welsh Government for three years, renewable subject to a satisfactory report from HEFCW's Chair. HEFCW's Chair is involved in developing the 'person spec' and in the long and shortlisting. Positions are advertised. The stated time commitment is 1.5 days per month. For the Chair it is 6 days per month though we understand HEFCW's current Chair has advised the Welsh Office that 3 days per month may be more realistic.

Whereas with private sector companies it would be expected that a prospective new director would meet with each existing director prior to accepting an offer of appointment, and would conduct his or her own due diligence including visiting the organisation, we are not aware that anything equivalent applies in the case of

HEFCW. A difference is that in the private sector the directors need to have met a prospective director as it is the board that initially appoints a new director whose appointment will be up for confirmation at the next meeting of the shareholders, whereas the appointment process is significantly different in the case of HEFCW.

A Council member belongs to an average of 2.5 committees and a committee meets on average 2.5 times a year. There are usually 8 meetings of Council and three institutional visits each year. Assuming each meeting effectively takes up a day of a Council member's time this amounts to about 15 days each year. This excludes preparation time, other time taken between meetings and travel time outside of the day of the meeting, and it is an approximate *average* per Council member. Travel distances are usually long as most members are based outside Wales as HEFCW's Council members are not employed by the Welsh bodies that HEFCW funds. So the standard estimate of 1.5 days per month is not generous, in some cases will certainly be an under-estimate, and would suggest that there is a risk of Council members being poorly prepared for meetings.

The survey suggested that Council and committee members felt adequately prepared for meetings although there was a comment from management that this may not always be the case, particularly for the 'For approval without discussion' and 'For information' agendas.

Despite the demands upon them, an analysis of attendance records of members at Council and Council Committee meetings shows that in 2017-18 and 2018-19 average attendance of members has been excellent at between 82% and 90%.

Over the past two years there has been a high turnover of Council members which has resulted in a Council relatively inexperienced about HEFCW. This must threaten Council's potential to be effective and add to the strain imposed on HEFCW's executive. For one reason or another some recent appointees have left.

#### **6.14 Induction of new Council members**

HEFCW has developed and applies a robust induction process. The Chair speaks with all new Council members on appointment, including to discuss on which committee(s) the member might serve. The Council Secretary contacts new Council members on appointment to provide copies of the standard governance documents, Council meetings timetable, Declared Interests Form; details of HEFCE's electronic paper distribution system, T&S policy and forms; current Corporate Strategy, Operational Plan and Remit Letter, committee structure chart and details of setting up on the payroll; etc.

New Council members are invited to the HEFCW office for around half a day of induction with the senior executives, for which there is a standard programme reviewed and updated as necessary on each new appointment.

For new independent (i.e. non-Council) committee members, the relevant committee secretary contacts them to arrange a discussion with the committee chair and also, as required, an induction meeting with relevant HEFCW staff.

Committee secretaries may send their new members other specific briefing documents relevant to the remit of the committee concerned.

### Objectives and scope of the review

The specific objectives of the review were set out in the contract specification provided with the invitation to quote. The text below is from our proposal where we have used HEFCW's objectives and added our comments on the objectives and scope.

A review of the operation and effectiveness of the Council's current governance processes and arrangements, gleaned through:

1. observations of Council meetings (19 September and/or 14 & 15 November)
2. observations of two committee meetings: one 'advisory' committee (either: Quality Assessment Committee, 4 October; Regulation Committee, 15 October; or Student Opportunity and Achievement Committee, 8 November) and one 'governance' committee (Audit and Risk Assurance Committee, 16 October or 4 December)
3. discussions with individual Council members (around the abovementioned Council or committee meetings, or individually)
4. discussions with relevant HEFCW staff
5. discussion with a cross-section of independent members of the Council's committees
6. reviews of key corporate governance documents, including minutes of Council meetings

The review should specifically be carried out to provide:

- I. A view on the quality and effectiveness of the Council's governance oversight and challenge. For example: Is there evidence of sufficient and robust scrutiny and challenge by the Council? Does the Council need to further strengthen or improve in this area?
- II. A view on whether the Council's current committee structure is fit for purpose and effective.
- III. A view on whether there is an appropriate relationship between Council members and HEFCW staff. For example, does the Council add value to the work of staff, such as in the way in which it provides general steers and in its decisions?
- IV. proposals on how the Council might streamline and improve its governance and operational processes, while continuing to meet all its statutory responsibilities, and on how best to optimise Council members' time.
- V. A view on the effectiveness of induction arrangements for new Council members.

- VI. A view on how effective is the Council in developing and monitoring the HEFCW Corporate Strategy.
- VII. A view on how the Council is assured that it is covering all its formal requirements and responsibilities.
- VIII. As available, comparative benchmarking information on HEFCW's governance arrangements vis-à-vis other similar bodies.
- IX. A report summarising the findings from the review and a set of recommendations by December 2019.
- X. A presentation of the findings at the Council's meeting on 23 January 2020.

It should be noted that although the specific objectives will require extensive work in terms of observing meetings and discussions with Council members, independent committee members and staff and review of key governance documents the scope is somewhat narrower than might be the case for a typical governance or board review.

Firstly there are no requirements for form an opinion on:

- The Council's processes for ensuring risks are appropriately identified, assessed and managed
- The effectiveness, experience, performance, succession or diversity of the Council, its committees and its individual members (although this could be inferred to be a requirement)
- The leadership, including on cultural and ethical matters, of HEFCW by the Council as a whole.

Secondly the objectives are based more on operations and processes rather than on outputs. Examples of outputs which might also be considered include:

- How well does the Council lead the organisation?
- Were all the decisions made by the Council good ones?
- How well does the Council set strategy?
- Is that strategy the best one available?
- Is that strategy being achieved?
- How well does the Council ensure the necessary financial, human and other resources are present to achieve objectives in line with the strategy?
- How well does the Council monitor organisational performance?
- How clear is the Council that the organisation always operates within its risk appetite and tolerance?
- How confident is the Council that it understands all the significant risks facing the organisation?
- How satisfied is the Council that all these risks are managed, mitigated or transferred so that any residual risk is within the board's set risk tolerance?
- How well does the Council set the values and standards, including ethical values, for the whole organisation?
- How sure can the Council be that the values and standards it sets are indeed embedded throughout the organisation?

## Annex 7.2

### Meetings held and attended during this governance review

Excludes numerous meetings with Dale Hall (Council Secretary).

In addition, an online survey was completed, as set out in Section 7 of this Report

Meeting date	Meeting and attendees
3 <sup>rd</sup> October	AC & PM met the steering group: Dr David Blaney (CEO), Nick Williams (Director of Corporate Services), Dr John Graystone (HEFCW Council member and Chair of Council's Audit and Risk Assurance Committee) and Dale Hall (Council Secretary)
15 <sup>th</sup> October	PM met with Steven Williams (Senior Regulation and Strategy Manager)
15 <sup>th</sup> October	PM met with Ewen Brierley (Director of Regulation & Analysis)
15 <sup>th</sup> October	PM met with Professor Christine Ennew (Chair of Council's Regulation Committee)
15 <sup>th</sup> October	PM met with Prof Les Ebden (co-opted member of Council's Regulation Committee)
15 <sup>th</sup> October	PM attended Council's Regulation Committee
13 <sup>th</sup> November	AC & PM met with Sue Humphreys (Head of Internal Audit)
13 <sup>th</sup> November	AC & PM attended the Council Workshop
13 <sup>th</sup> November	AC & PM met with Dr. John Graystone (Chair of Council's Audit & Risk Assurance Committee)
14 <sup>th</sup> November	AC & PM attended the Council meeting
14 <sup>th</sup> November	AC and PM met with David Allen (Chair of Council)
14 <sup>th</sup> November	AC & PM met with Dr. John Graystone (Chair of Council's Audit & Risk Assurance Committee)
14 <sup>th</sup> November	AC & PM met with Dr. David Blaney (CEO)
14 <sup>th</sup> November	PM met with Dale Hall (Council Secretary)
4 <sup>th</sup> December	AC & PM attended the Audit & Risk Assurance Committee
5 <sup>th</sup> December	AC met with Nick Williams (Director of Corporate Services)
5 <sup>th</sup> December	AC met with Seamus Gates (independent co-opted ARAC member)
5 <sup>th</sup> December	PM met with Bethan Owen (Deputy Chief Executive)
5 <sup>th</sup> December	AC met with Dale Hall (Council Secretary)
5 <sup>th</sup> December	AC met with Tracy Bhamra (Council member and ARAC member)
23 <sup>rd</sup> January	PM & AC to present their Report to the meeting of Council

## Annex 7.3

### The FRC's specification of the role of the senior independent director (SID)

	Best practice	Source
1.	The responsibilities of the SID (and those of the chair, chief executive, board and committees) should be clear, set out in writing, agreed by the board and made publicly available.	FRC Code (2018b), provision 14.
2.	The SID should be appointed by the board.	FRC Code (2018b), provision 12
3.	The SID should be one of the independent directors.	FRC Code (2018b), provision 12
4.	The SID should be a sounding board for the chair (in the delivery of the chair's objectives).	FRC Code (2018b), provision 12; FRC (2018a), para 66.
5.	The SID should be an intermediary between the chairman and other directors and shareholders.	FRC Code (2018b), provision 12
6.	When called upon, the SID should seek to meet a sufficient range of major shareholders in order to develop a balanced understanding of their views.	FRC (2018a), para 35.
7.	The SID should be available to shareholders if they have concerns that contact through normal channels of chair, chief executive or other executive directors has failed to resolve or for which such contact is inappropriate.	FRC (2018a), para 67.
8.	The SID should lead meetings with the non-executive directors without the chair present at least annually to appraise the chair's performance, and on other occasions as necessary.	FRC Code (2018b), provision 12; FRC (2018a), para 66.
9.	The SID might also take responsibility for an orderly succession process for the chairman, working closely with the nomination committee.	FRC (2018a), para 68; FRC (2018a), para 66.
10.	The SID should work with the chairman and other directors, and/or shareholders, to resolve significant issues at times of corporate stress.	FRC (2018a), para 68
11.	The SID should support the chairman in leading the board evaluation process and acting on the results.	FRC (2018a), para 61
12.	The SID should lead the non-executive directors in the process that evaluates the performance of the chair.	FRC (2018a), para 107
13.	On occasion, the SID may lead the entire board evaluation	FRC (2018a), para 107
14.	It is a good idea for the SID to serve on board committees.	FRC (2018a), para 66.

FRC, Financial Reporting Council (2018a) *Guidance on Board Effectiveness*, July, [<https://www.frc.org.uk/getattachment/61232f60-a338-471b-ba5a-bfed25219147/2018-Guidance-on-Board-Effectiveness-FINAL.PDF>, accessed 25<sup>th</sup> July 2019].

Financial Reporting Council (2018b) *The UK Corporate Governance Code*, July [<https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf>, accessed 25<sup>th</sup> July 2019].

### HM Treasury's specification of the role of the lead non-executive Board member (LN-EBM)

As with the FRC in relation to listed companies, so also HM Treasury has a corporate governance Code for central government entities<sup>22</sup>, together with further supporting Guidance Note<sup>23</sup> on implementing the Code. For simplicity these are phrased from the perspective of government departments and their ministers but are intended to be applied by other governmental bodies with adjustments as needed. HEFCW have told us that they benchmark their corporate governance against this Code.

**From the Code** (p18, paras 3.7 to 3.9; p23, paras 4.12 to 4.13):

In each department, one of the non-executive board members should be designated as the lead non-executive board member. This person should:

- support the lead minister as chair of the board
- meet the other non-executive board members regularly, ensuring that their views are given due weight on the board and the lead minister is aware of any concerns
- ensure that the non-executive board members collectively meet the lead minister alone from time to time
- liaise with the Government Lead Non-Executive (see paragraph 3.9 below)
- play an active role in the cross-government network of lead non-executive board members

If the non-executive board members believe that the permanent secretary is a barrier to effective delivery, in extreme cases they can recommend that the Prime Minister, lead minister and Cabinet Secretary and Head of the Civil Service, should remove him or her from post.

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<sup>22</sup> HM Treasury, Cabinet Office (April 2017) *Corporate Governance in Central Government Departments: Code of Good Practice*, [[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/609903/PU2077\\_code\\_of\\_practice\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609903/PU2077_code_of_practice_2017.pdf), accessed 22<sup>nd</sup> October 2019].

<sup>23</sup> HM Treasury, Cabinet Office (April 2017) *Corporate Governance in Central Government Departments: Code of Good Practice – Guidance Note* [[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/609668/PU2076\\_corporate\\_governance\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609668/PU2076_corporate_governance_guidance.pdf)].

The Government Lead Non-Executive, appointed by the Prime Minister, should:

- meet departmental lead non-executive board members, individually and as a collective, regularly
- report to Parliament through an annual report to the Public Administration and Constitutional Affairs Committee. This report will include the key concerns of the non-executive board member community and provide feedback on policy implementation. It will also collate examples of best practice in the work of boards and non-executive board members. The report will also be provided to the Prime Minister; Secretaries of State; Cabinet Secretary and Head of the Civil Service; and Chief Executive of the Civil Service
- act as a non-executive board member of the Cabinet Office board

The lead non-executive board member should support the chair to ensure a board effectiveness evaluation is carried out annually, and with independent input at least once every three years.

The lead non-executive board member should ensure the chair acts on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, recommending new members be sought for the board (subject to the open appointments process) or seeking the resignation of board members.

### Profiles of the consultants

**Prof. Paul Moxey Bsc(Eng), MBA, ACA FCIS** [www.moxey.co.uk](http://www.moxey.co.uk)



Governance, culture and risk management consultant, trainer and author

Paul works with boards and executive teams in assessing and improving their culture and governance and risk management practices to improve organisational performance and resilience. He also writes and trains boards and others on governance, board effectiveness, risk and corporate culture.

As an auditor he has undertaken and directed numerous reviews including of corporate governance. In 2000 he wrote a guide for the NHS on auditing governance.

Paul is co-chairman of the [CRSA Forum](#), a network of practitioners established in 1994 interested in ways of assessing the behavioural and cultural aspects of risk, governance and organisational performance. He is a fellow of scenario and futures

consultants [SAMI Consulting](#), a board member of the UK [Policy Governance Association](#) and an editorial board a governance journals. Paul has also been chairman of a small housing charity, was a director and shareholder of a retail and printing business which he started in 2010 and is a trustee of a sailing club.

Paul is a chartered accountant and a chartered secretary and earlier in his career he was a company secretary and group financial controller of a small UK listed company and then a larger unlisted company with 5,000 staff. As well as being a director of the retail and printing business he has been the director of an NHS audit agency which employed 30 staff and later of another larger NHS audit agency.

His publications include:

[ICSA Corporate Governance Study Text](#) 2018

[Incentivising ethics](#) 2016

[Culture and Channelling Corporate Behaviour Summary of Findings](#). And related publications 2015

[Creating value through governance: towards a new accountability](#). 2014

[Capitalism and the concept of the 'public good'](#) 2011

[Risk and Reward tempering the pursuit of profit](#) 2010

[Corporate Governance and the Credit Crunch](#) 2008

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Andrew has undertaken board evaluations for Rathbones (2014) and the Abu Dhabi Commercial Bank (2012), run courses on board evaluation for ICSA, and undertaken internal audit quality assurance reviews of the Research Councils' Internal Audit Service (2008), Bulgaria's Department of Agriculture (2010) and Audit North West (2013). Led a workshop on internal audit quality assurance for HEFCE (2007). A member of the *International Internal Audit Standards Board* (1992-5 and 2008-14) and the FRC's *Auditing Practices Board* (2006-9). From 2004 a member and until 2017 chair of Accountancy Europe's (FEE's) *Corporate Governance and Company Law* expert group in Brussels.

Andrew has mentored many independent directors for Advanced Boardroom Excellence and previously for IDDAS. A judge for Hawkamah's Bank Corporate Governance Awards in the MENASA region (2009-15), and the ICSA-Hermes Transparency in Governance Awards (2011-15).

Andrew was Dean of Cass Business School in the City of London where he is *professor emeritus* and has held professorships in four other universities. As an independent director, Andrew has chaired the audit committees of a large mutual insurer (The Medical Defence Union), a well-known charity (The Tavistock Institute), a FTSE250 financial institution (The Paragon Group of Companies) and a bank (The National Mortgage Bank). He has been a member of other audit committees including an NHS Hospital Trust, and a director of other companies.

Author of *Chambers Corporate Governance Handbook* (2017), 7<sup>th</sup> ed. Bloomsbury, ISBN 978 1 78451 444 0, 1,200 pps); *The Operational Auditing Handbook - Auditing Business & I.T. Processes* (2<sup>nd</sup> ed., Wiley, April 2010, ISBN 0470744766, 884pps); *Tolley's Internal Auditor's Handbook* (2<sup>nd</sup> ed., 2009, ISBN 9781405735674, 750 pps); and two dozen other books on these subjects plus translations.