

Summary of Business for
Council Effectiveness and Statutes Review
Project Board



Title	Implementation of Recommendations
Author/ Comments	Christine Cartwright (E) christine.cartwright@rhul.ac.uk
Date	13 May 2013
Status	For information
Document type	Project report
Summary	This paper demonstrates the envisioned implementation of the first phase of the recommendations.
Previous consultation	Project Board meeting 11 March 2013, 10 April 2013 Council meeting 20 March 2013
Resource implications	Time from the Secretariat to implement the recommendations.
Risk analysis	See attached risk register
Effective date of introduction	Immediate
Recommendation	<p>The Board is asked to</p> <ul style="list-style-type: none"> - APPROVE the implementation of these recommendations in this format - SUBMIT this work to Council for its meeting on 26 June.

College Council

Meeting of day month year



Title	
Author	Name, email address, and telephone number
Type	E.g. new policy for approval, proposal for decision, proposal for discussion, budget report, report from another committee, minutes to note, etc.
Date	Date paper submitted to Secretariat
Strategic context	Set out how this links with the College Strategy
Summary	A short paragraph summarising the reason/s this report has being taken to Council
Consultation	Summary of where the matters discussed have been previously considered, e.g. professional service or academic dept., management committee/s, wider staff and/or student consultation
Documentation	Summary of any other documentation that has been discussed relating to the matter at hand, e.g. earlier drafts of policies, project updates, web resources
Resource implications	Summary of financial costs and/or increased staff time required to carry out any measures proposed
Value for money	Assess value for money of any proposed course of action
Risk analysis	Summary of the main financial and/or reputational risks associated both with approving and with not approving any proposal under consideration
Equality and diversity impact	Summary of how any proposals may affect some groups of staff and/or students
Next steps	Set out here the main steps that will follow/timetable of actions
Effective date of introduction	
Recommendation	Summarise the high level recommendations included in the report, making clear what Council is being asked to do (note, approve policy, approve expenditure, etc.)

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Preparing papers for Council

Papers for Council should be brief and to-the-point, with the express intent of delivering exactly the right information to Council members to allow them to collectively perform their primary roles, namely of determining the strategy for the College, ensuring that policies and processes that can achieve the desired outcomes are in place and are properly executed, safeguarding the good name of the College, and ensuring the financial and academic probity and sustainability of the College.

To this end, Council has approved the creation of a new cover sheet for all papers, which directs authors to provide certain key pieces of information:

- *A short statement of what is covered in the paper and what type of paper it is*
 - o to give clear indication of what Council members are being asked to do with the information presented (note it, make a decision, request further updates, etc.)
- *A summary of who has already been consulted and of what other documentation has been generated*
 - o to provide members with assurance that the matter has been already considered in any/all appropriate fora
- *An outline of the implications of any proposed course of action, considering resources, value for money, for equality and diversity issues and risks*
 - o to provide assurance that the College is acting to ensure its financial and academic probity and sustainability
- *A summary of the next steps that will be taken, if any approval is being sought*
 - o to provide assurance that suitable implementation processes are in place
- A list of the actions required of Council
 - o to support the actions of the Chair and Secretary to help members reach decisions which are then recorded.

Papers for Council should avoid repurposing statements and data generated for management reporting as these are unlikely to be suitable for the governance function. Instead, paper authors should provide a clear context statement at the outset, to brief Council members on the matter at hand, before enumerating the key facts of the case, presenting the supporting evidence in summary, and making recommendations for Council to note or approve measures as appropriate. Papers should in general be no more than 4 sides of A4 in length, not including the cover sheet, with additional information where required supplied in appendices.

Papers should be submitted to the College Secretariat two weeks before a Council meeting in order that any issues requiring further attention can be addressed in good time without delaying the circulation of final papers to Council members.

Simon Higman
Registrar and Secretary
May 2013

Chair of Council, Vice-Chair of Council, and Chairs of Council Committee

The roles of the Chair and Vice-Chair of Council, and of Chair of some Council committees, were specified in job descriptions last considered and approved by Council in June 2008 (Chair and Vice-Chair) and January 2009 (Committee Chairs). Revised role descriptions will be brought to a Council meeting in 2014 as part of the scheduled Committees Review.

The Royal Holloway and Bedford New College Act of 1985 states that neither the Chair nor the Vice-Chair of Council may be in the employment of the College or of the University of London, and nor may either be a student of the College.

1. Chair of Council

The major responsibilities of the Chair of Council are

- to lead the College's Governing Body in exercising its role of overall governance of the College, setting strategy and ensuring financial probity
- to Chair Council and other major committees, ensuring that all members have an opportunity to contribute according to their strengths and that College officers are held to account for their management of College business
- to ensure that appropriate governance procedures are followed and that decisions are taken as necessary and are suitably recorded
- to take routine or emergency decisions by Chair's action and to decide when emergency meetings are appropriate
- to formally appraise the Principal annually and, where necessary, lead the recruitment of a new Principal or remove a Principal in accordance with procedures laid down in the College Statutes.

2. Vice-Chair of Council

The major responsibilities of the Vice-Chair of Council are

- to chair any meetings normally presided over by the Chair of Council in his or her absence
- to represent the Chair of Council at events when she or he is unavailable
- to mentor and support new members of Council and to oversee the process of performance monitoring for such members
- to act upon any grievances brought by Council members against each other or the Chair of Council and, if necessary, instigate disciplinary proceedings.

3. Chairs of Council Committees

Chairs of Council Committees must be lay members of Council. In exceptional circumstances it may be necessary for a Chair of a Committee to take Chair's action. This should only be undertaken where a timely decision is essential and cannot be reached via circulation. Chair's action in these circumstances can be taken following consultation with either the Chair or Vice-Chair of Council, so long as the powers delegated to the Committee are not exceeded. Such decisions must be reported formally by the Committee Chair or Secretary at the next meeting.

Simon Higman
Registrar and Secretary
May 2013

The role and responsibilities of members of Council

Background

Council is the College's governing body. Subject to the powers of Academic Board in relation to academic matters, it has ultimately responsibility for the affairs of the College. The primary functions of Council are:

- to determine the strategy for the College
- to ensure that policies and processes that can achieve the desired outcomes are in place and are properly executed
- to safeguard the good name of the College
- to ensure the financial and academic probity and sustainability of the College.

Council's powers are prescribed in the College Statutes¹ and its key responsibilities are listed in the Statement of Primary Responsibilities.² In carrying out its role, Council must meet the conditions of the Financial Memorandum between HEFCE and institutions,³ which includes an expectation that institutions adopt the CUC's governance code of practice and general principles.⁴ These documents are the main points of reference for the following description of the role and responsibilities of Council members. Note has also been taken of the governance materials published by the Leadership Foundation for Higher Education,⁵ and the findings of a governance benchmarking exercise undertaken by the Secretariat on behalf of Council in December 2012 and January 2013.⁶

1. Collective responsibility

Members of Council have collective responsibility for overseeing the university's activities,⁷ and should expect, therefore, to be served by effective arrangements for receiving assurance that the institution:

- (a) has a robust and comprehensive system of risk management, control and corporate governance;
- (b) has regular, reliable, timely and adequate information to monitor performance and track the use of public funds;
- (c) plans and manages its activities to remain sustainable and financially viable;
- (d) informs HEFCE of any material adverse change in its circumstances;
- (e) uses public funds for proper purposes and strives to achieve good value for money from them;
- (f) complies with the mandatory requirements relating to audit, as set out in HEFCE's Audit Code of Practice⁸ and annual accounts direction;⁹
- (g) sends requested information to HEFCE, including the annual accountability return and HESA data return;
- (h) has effective arrangements for the management and quality assurance of data submitted to HESA, HEFCE, and other funding bodies;
- (i) has an effective framework to manage the quality of learning and teaching and to maintain academic standards;
- (j) considers and takes appropriate action in relation to HEFCE's annual assessment of institutional risk.

¹ <http://www.rhul.ac.uk/iquad/collegepolicies/documents/pdf/compliance/collegestatutesdecember2011.pdf>

² <http://www.rhul.ac.uk/aboutus/documents/pdf/governance/2011statementofprimaryresponsibilitiesupdatednovember2011.pdf>

³ http://www.hefce.ac.uk/media/hefce1/pubs/hefce/2010/1019/10_19.pdf

⁴ <http://www.hefce.ac.uk/pubs/year/2009/200914/>

⁵ <http://www.lfhe.ac.uk/governance/>

⁶ <http://www.rhul.ac.uk/iquad/documents/pdf/projects/governancereview/governancebenchmarkingreport.pdf>

⁷ Paragraph 18 of the HEFCE Financial Memorandum, see note 3

⁸ Annex B of the HEFCE Financial Memorandum, see note 3

⁹ The accounts direction for 2012-13 financial statements can be found at: <http://www.hefce.ac.uk/pubs/year/2012/cl212012/>

2. Charitable status

2.1 The College has charitable status, and members of Council are charitable trustees, subject to the obligations this imposes under charity law. They are expected to discharge their duties of compliance, prudence and care and to accept ultimate responsibility for the affairs of the College and for ensuring that it delivers its charitable objectives for the public benefit. The Charity Commission provides detailed information about the responsibilities of charitable trustees.¹⁰

2.2 In relation to compliance, members are expected to ensure that the College complies with charity law and the requirements of HEFCE as regulator; to ensure that the College complies with other relevant legislation, in particular the Further and Higher Education Act 1992 and legislation relating to employment, health and safety and diversity and equality of opportunity; and to ensure that the College acts in accordance with its Statutes. Members are expected to act solely in the interests of the College, with integrity and avoiding personal conflicts of interest.

2.3 In relation to prudence, members are expected to ensure that the College is and will remain solvent, that its funds and assets (including those derived from charitable donations) are used reasonably and only in furtherance of its charitable objectives, that undue risk to its property, funds, assets or reputation is avoided and that special care is taken in relation to investment or borrowing.

2.4 In relation to care, members are expected to act with reasonable care and skill to ensure that the College is well-run and efficient. Exercise of this duty also means considering taking external professional advice on matters where there may be material risk, or where the trustees may be in breach of their duty.

3. Roles and responsibilities of members of Council

The main collective responsibilities of members of Council are:

- to promote and safeguard the interests of the College, supporting the development of its mission and strategic vision such that these meet the need of stakeholders;
- to ensure that the College's performance against its strategic objectives is monitored and evaluated;
- to be the principal financial, business, legal and employing authority of the College and to have overall responsibility for its assets, property and estate;
- to ensure the establishment and monitoring of systems of control and accountability;
- to ensure that the College delivers its charitable objectives for the public benefit.

4. Standards and behaviours of members of Council

4.1 Members are expected to conduct themselves in accordance with accepted standards of behaviour in public life, which embrace selflessness, integrity, objectivity, accountability, openness, honesty and leadership.¹¹

4.2 As charitable trustees, members are expected to discharge their duties of compliance, prudence and care, and to accept ultimate responsibility for the affairs of the College and for ensuring that it delivers its charitable objectives for the public benefit.

¹⁰ <http://www.charitycommission.gov.uk/Library/guidance/cc3atext.pdf>

¹¹ Annex I of HEFCE Financial Memorandum; see note 3

4.3 Members are expected to have a strong personal commitment to Higher Education and the values, aims and objectives of the College. They are expected to act as ambassadors and advocates for the College, promoting its activities and strategic aims in the wider community.

4.4 Members are expected at all times to act fairly and impartially in the interests of the College as a whole, using independent judgment and maintaining confidentiality as appropriate.

4.5 Members are expected to attend all Council meetings and meetings of any other College committees of which they are a member, or to give timely apologies for absence.

4.6 Members are expected to participate as appropriate in induction and development opportunities arranged by the College.

4.7 Members are required to submit an annual return to the College's Register of Interests, to be made publicly available via the College's web pages. Members must disclose any interest they have in any matter under discussion by Council and must accept the ruling of the Chair in relation to the management of the situation so that the integrity of Council's business is maintained.

4.8 Members are expected to play an appropriate part in ensuring that the necessary business of Council is conducted efficiently and effectively. They are expected to use their knowledge and skills to make constructive and rational contributions to debate, to apply strategic insight to complex issues, and to offer constructive challenge to the College. In doing this, they must recognise the proper separation between governance and executive management.

4.9 Members are expected to act in a corporate manner, such that decisions are taken collectively by all members acting as a body in the interests of the institution. Members elected or appointed by particular constituencies may not act as if delegated by the group that elected or appointed them, and may not be bound in any way by mandates given to them by others.

4.10 Members may from time to time, and in accordance with the Regulations of Council and Financial Regulations, be asked to witness the application of the College seal and act as a formal signatory to sealed documents on behalf of the College.

5. Supplementary guidance for staff and student members of Council

The expectations detailed in section 4 apply to all members of Council. It is recognised, however, that the particular knowledge and understanding that staff and student members bring to Council debate, while valuable, can give rise to perceived conflicts of interest, and the fact that they are internal stakeholders of the College as well as governing body members can sometimes lead to uncertainty as to their role on Council. This duality should not, however, be allowed to confuse the key principle that Council members have a corporate responsibility and that this overrides any representational role that they may be perceived to have.

6. Professional indemnity of members of Council

Individual members of Council are covered by the College's Directors' and Officers' Liability insurance policy in respect of the costs of any claim of negligence which may be made against them in the carrying out of their duties as a member of Council.

Simon Higman
Registrar and Secretary – May 2013

Trustees' liabilities

1. Background

The CUC *Guide for Members of Higher Education Governing Bodies in the UK* states that, "The law relating to the personal liabilities of members of governing bodies is complex and its interpretation is ultimately a question for the courts." This is followed by guidance on how members should conduct themselves and a statement that, "If this advice is followed it is unlikely that personal liability could arise, particularly since the powers and responsibilities of governing bodies are exercised in a collective manner and decisions made by formal resolution."¹² This statement concerning trustees' liability expands on the extent to which, in their role as charity trustees, members would be or could be held to be personally liable in the event of the financial failure of the institution.

2. Charitable and legal status of the University

2.1 The extent of trustees' personal liability depends on whether the charity is incorporated (and is therefore a legal entity) or unincorporated. The College is incorporated by virtue of Act of Parliament: Royal Holloway and Bedford New College.

2.2 If an incorporated body cannot pay its debts or its assets are less than its liabilities then it will become insolvent. The individual trustees will not be responsible for paying the debts except in the circumstances set out in 3 below.

2.3 A trust or unincorporated association is not a legal entity and therefore, for this type of charity, any debts or liabilities are incurred by the individual trustees on behalf of the charity. If therefore a trust or unincorporated association cannot pay its debts, the individual trustees will be responsible for them (assuming they were incurred following a proper decision of the trustees).

3. Debts and other circumstances giving rise to personal liability

3.1 The College is itself normally liable for debts incurred by Council on its behalf. Members of Council will normally have no personal liability for the College's debts. There are, however, certain limited circumstances involving fraud, transactions at an under value, wrongful trading or breach of trust, where members of Council may face personal liability.

3.2 It should be noted that 'breach of trust' covers a range of possible actions on the part of the trustees. If the trustees do not act in accordance with the charity's constitution or charity law, they will be in breach of trust. The Charity Commission's publication, *The Essential Trustee*, is a useful guide to trustee duties and responsibilities and it is recommended that all members of Council should read it.¹³

3.3 If the trustees act prudently, no personal liability should arise (see 4 below). Personal liability will usually arise where trustees have misapplied trust property, for example if they use charity money for purposes not included in their constitution, retain charity funds themselves or invest funds inappropriately.

4. Insurance and other limits to personal liability

4.1 Trustees will not always be held liable for a breach of trust even if they have actually committed such a breach. The court has jurisdiction to relieve trustees from liability for breach of trust if the

¹² http://www.hefce.ac.uk/media/hefce1/pubs/hefce/2009/0914/09_14.pdf page 39-40, paragraph 1.19

¹³ <http://www.charitycommission.gov.uk/Library/guidance/cc3atext.pdf>

trustee has acted honestly and reasonably and ought to be excused for the breach and for omitting to obtain the court's direction in the matter in which he/she committed the breach. This can help trustees who make technical breaches of trust law.

4.2 Trustees can also be protected against personal liability by taking out indemnity insurance. Generally, policies cover the trustee for a breach of trust, negligence or default. They cannot cover fraud or wilful misconduct, i.e. intentional breaches or acting without caring whether or not something is in the best interests of the charity. Most breaches covered by insurance will also be covered by the relieving provision of the court above.

4.3 The University holds insurance for Directors' and Officers' Liability. Members of Council are covered for 'wrongful acts', which include technical breaches of trust law made in good faith and negligent acts provided they were committed in good faith.

4.4 Taking into account the College's incorporated status, the relieving provision of the court and indemnity insurance, there is not, in essence, any residual personal liability for the trustees where they have acted in good faith unless they acted in a way which was really unreasonable even though it was in good faith, for example gambling funds of the College.

4.5 As long as the trustees act reasonably and in accordance with the constitution, their liability should not be a concern.

4.6 There are various statutory duties which impose personal liability on the trustees (e.g. the Bribery Act 2010 and health and safety legislation) which are not covered in this note.

Simon Higman
Registrar and Secretary
May 2013