

Code of Practice for Members of Governing Body and Governing Body Committees, University College Cork

1.0 Introduction

This Code applies to all members of the Governing Body of University College Cork, and to members of committees established by the Governing Body for whatever purpose.

The responsibilities of the Governing Body, as the entity controlling a large and prestigious publicly funded institution, are onerous. Governance of the institution is primarily the responsibility of the Governing Body. The function of governance is to ensure that the organization fulfills its overall purpose, achieves its intended outcomes and operates in an efficient, effective and ethical manner. *“Individual behaviour is a major factor in the effectiveness of the Governing Body, and also has an influence on the reputation of the organization, the confidence and trust of members of the public have in it and the working relationships and morale within it.”*¹ It is therefore critical to the continued well-being of the University that Governors understand and fully accept the responsibilities of membership.

This Code is intended to ensure that Members are aware of, and accept, the responsibilities associated with membership and follow high standards of ethical and professional conduct, as members of Governing Body, in the interest of Governing Body and the University as a whole.

A complaint or allegation that a Member is in breach of this Code shall be referred to the Secretary of the Governing Body (copy to the Chairperson of Governing Body) who shall deal with the complaint or allegation in accordance with the procedure set out in Section 12 and Appendix 1 of this document.

¹Nothing in this code shall impede or constrain a Member of Governing Body in performing his/her duties/functions as prescribed in the University Statutes and Regulations or in the Universities Act, 1997. In this regard Governors should note the Universities Act (1997) Third Schedule, Paragraph 8 (3):

¹ The Good Governance Standard for Public Services, The Independent Commission for Good Governance in Public Services, 2004, P.14

“A member of a governing authority of a university shall at all times act, as a member, in the best interests of the university and shall not act as a representative of any special interest provided that nothing in this paragraph shall restrict a member from representing at meetings of the governing authority the views of those by whom he or she has been elected or to restrict the freedom of expression of that member.”

2.0 Definitions

“the Act” means the Universities Act, 1997.

"Governing Body" includes the Governing Body and committees appointed by the Governing Body.

"Member" means an elected, appointed or nominated member of Governing Body or of a committee of the Governing Body, except where the context otherwise implies.

“Statute” means a statute of University College Cork.

3.0 Functions of the Governing Body

3.1 The functions of the Governing Body as set out in Section 18 of the Universities Act:

“18.—(1) The functions of the governing authority of a university shall be, in pursuance of the objects of the university under section 12 but within the constraints of its budget under section 37-

*(a) to control and administer the land and other property of the university,
(b) to appoint the chief officer and such other employees as it thinks necessary for the purposes of the university,
(c) subject to this Act and its charter, if any, statutes and regulations, to determine the membership from time to time of the governing authority, and
(d) to perform such other functions as are imposed on it by or under this or any other Act or by its charter, if any, statutes and regulations.*

(2) For the purposes of the performance of its functions under subsection (1)(b), the governing authority shall develop such interview and other procedures as in its opinion will best ensure participation in the selection process by high quality candidates from both within and outside of the employees of the university and specify those procedures in a statute or regulation.

(3) A governing authority has, subject to this or any other Act or its charter, if any, such powers as are necessary for the purposes of performing its functions.”

Committees

“(4) A governing authority may, from time to time, appoint such and as many committees, consisting either wholly or partly of members of the governing authority, as it thinks necessary to assist it in the performance of its functions and may assign to those committees such of its functions as it thinks fit.

(5) A committee appointed under subsection (4) shall operate in such manner as the governing authority may direct and its acts shall be subject to confirmation by the governing authority unless the governing authority otherwise directs.”

Performance of Functions

“(6) In performing its functions a governing authority, or a committee where appropriate, shall—

(a) have regard to the promotion and use of the Irish language as a language of general communication and promote the cultivation of the Irish language and its associated literary and cultural traditions;

(b) have regard to the attainment of gender balance and equality of opportunity among the students and employees of the university and shall, in particular, promote access to the university and to university education by economically or socially disadvantaged people and by people from sections of society significantly under-represented in the student body; and

(c) ensure as far as it can that the university contributes to the promotion of the economic, cultural and social development of the State and to respect for the diversity of values, beliefs and traditions in Irish society.”

3.2 Primary Duty of Members

Members shall:

carry out their functions with integrity, independence, honesty, good faith and proper purpose and shall act in the best interests of the University.

4.0 Due Skill and Care

Members shall:

act responsibly and fairly with the due care, skill, diligence, loyalty, and the prudence of a reasonable individual.

5.0 Conduct as Members

Members shall:

- 5.1 treat each other, and University staff and students, with professionalism, courtesy and respect;
- 5.2 not improperly influence other Members;
- 5.3 not act as spokespersons for the Governing Body in any form unless specifically requested by the Governing Body to do so;
- 5.4 participate actively and work co-operatively with fellow Members in discharging their responsibilities as Members.

6.0 Confidentiality / Use of Information

University College Cork is committed to providing access to general information relating to its activities in a way that is open and enhances its accountability to the general public. However, in the course of their duties, Members will have access, in written form and in the course of deliberations, to sensitive information such as personal information, information received in confidence by the University and commercially sensitive information. Members are required to respect the confidentiality of such information.

Members shall:

- 6.1 ensure that appropriate care is taken to guarantee the security of sensitive Governing Body and other documents, whether in paper or electronic form;
- 6.2 respect the confidentiality of information received in the performance of their duties, as well as the confidentiality of the deliberations of the Governing Body;
- 6.3 ensure that confidential records are subject to appropriate access procedures;
- 6.4 observe any restrictions agreed by the Governing Body on the use or dissemination of information (subject to Freedom of Information Act or

Data Protection Act requirements);

6.5 respect the privacy of individuals.

7.0 Duty to be Adequately Informed

Members should:

- 7.1 develop and maintain a clear understanding of the functions of the Governing Body (see Section 3 above), and of the Statutes including, *inter alia*, Statute 1, Chapter VII (where that statute is not superseded by the Act);
- 7.2 familiarise themselves with the contents of the Act and University Statutes;
- 7.3 develop and maintain a clear understanding of the role of any Governing Body committee on which they serve;
- 7.4 familiarise themselves with the contents of key University documents (as specified by Governing Body from time to time);
- 7.5 seek clarification and take advice in respect of matters outside the Member's expertise, in accordance with such procedures as may be agreed by Governing Body for this purpose from time to time;
- 7.6 prepare for meetings by reading and considering all papers circulated with the agenda, provided to them ordinarily at least one week before each meeting of the Governing Body.

8.0 Conflict of Interest

Given the complexity of Governing Body business and the range of commitments of each of its Members, it is possible that conflicts of interest for Members may arise from time to time. The need to address any such conflict is set out in the Universities Act, 1997, Schedule 3. Members should be vigilant to ensure that real or perceived conflicts of interest are acknowledged and addressed.

8.1 Real and Perceived Conflict of Interest

A Member shall be considered to have a **real** conflict of interest when he/she holds a personal interest, whether direct or indirect, of which he/she is aware

and which in the opinion of a reasonably informed and well-advised person is sufficient to put into question the independence, impartiality, and objectiveness that the said Member is obliged to exercise in the performance of his/her duties.

A Member should be aware that s/he may have a **perceived** conflict of interest when he/she appears to have, in the opinion of a reasonably informed and well-advised person, a personal interest, whether direct or indirect, that is sufficient to put into question the independence, impartiality, and objectiveness that the said Member is obliged to exercise in the performance of his/her duties.

8.2 Interests of Members of Governing Body and the Universities Act

The Act, Third Schedule, Paragraph 8 states:

8. (1) A member of a governing authority who has an interest in—

(a) a company (other than a public company of which he or she is not a director or otherwise involved in its management) or concern with which the university proposes to make a contract, or

(b) a contract which the university proposes to make,

shall disclose to the governing authority the fact of the interest and its nature and shall take no part in any deliberation or decision of the governing authority relating to the contract, and the disclosure shall be recorded in the minutes of the governing authority.

(2) A member of a governing authority of a university who is related to a person who is a candidate for appointment by the governing authority as an employee of the university, shall disclose to the governing authority the fact of the relationship and its nature and shall, if the governing authority so decides, take no part in any deliberation or decision of the governing authority relating to the appointment, and the disclosure and decision shall be recorded in the minutes of the governing authority.

8.3 Individual Responsibility of Members

Members shall:

8.3.1 declare all conflicts of interest;

- 8.3.2 not use their position as a Member for personal profit, gain or advantage;
- 8.3.3 not accept a gift, fee, favour, reward, gratuity or remuneration of any kind if it could be seen by the public, knowing the full facts, as intended or likely to cause a Member to act in a particular way or deviate from the performance of his/her duty;
- 8.3.4 not assist any person or any organization in its dealings with the University when such intervention may result in real or apparent preferential treatment to that person or organization by the University;
- 8.3.5 not use, directly or indirectly, any facilities or services of the University, nor allow them to be used, for purposes other than expressly approved by the University.

In accordance with good governance practice Members should:

- 8.3.6 after ceasing to be a Member, not make use of any information obtained in their capacity as a Member that is not generally available to the public, in order to derive therefrom a benefit or advantage for themselves or that of any family member;
- 8.3.7 for a period of two years after ceasing to be a Member, not give advice nor act in the name of or on behalf of someone else in negotiations with or in regard to contracts with the University.

Nothing in this Code shall restrict staff representatives on Governing Body from participating in deliberations or voting on, any matters relating to conditions of employment, which are not confined in their effect to the individual staff representative.

8.4 Disclosure of Interest

Where a conflict of interest arises, a Member shall make a full disclosure of the conflict, in writing, to the Secretary of Governing Body (copied to the Chairperson of Governing Body), as soon as s/he becomes aware of it or shall make a declaration at the commencement of the Governing Body meeting where such conflict arises.

8.5 Withdrawal from Deliberations and Decision

Members shall resolve a conflict of interest in the best interests of the University by declaring his/her interest and leaving the room, thereby taking no part in the relevant discussion, decision or action. In circumstances where a

Member is unsure as to whether or not a conflict of interest exists or is material, he/she should discuss the matter with the Chairperson prior to the meeting. If in doubt, he/she should declare and offer to withdraw.

9.0 Register of Interests

Members shall comply with the provisions of the **Ethics in Public Office Act (1995) and The Standards in Public Office Act (2001)** as these are applied to the Governing Body. The necessary Statement of Interest shall be returned annually to the President of the University who is the designated Officer for this purpose and to the Commission on Standards in Public Office by the due date – namely, 31 January for declarations covering the previous calendar year.

10.0 Advice on this Code

The Chairperson and Secretary shall:

advise any Member, upon his/her request, on any question pertaining to the application of this Code;

11.0 Committee for the Investigation of Complaints or Allegations

A Committee for the Investigation of Complaints or Allegations (the “Committee”) shall be established by the Governing Body and shall inquire into any complaint alleging a breach of this code.

11.1 Membership and Appointment of the Committee

11.1.1 The Chairperson of the Committee shall be an external member of the legal profession approved by the Governing Body who shall be appointed at the beginning of the term of the Governing Body;

11.1.2 The membership shall comprise, in addition to the chairperson, two Members, elected by the Governing Body, one of whom shall be an internal member, and one an external member, of the Governing Body; such election shall take place following prior nomination of candidates to be submitted by members of the Governing Body, comprising a proposer and seconder, so as to be received by the Secretary at least

seven days before the meeting of the Governing Body at which the election shall take place.

11.1.3 At least one Member of the Committee shall be a man and one a woman.

12.0 Procedure for Dealing with Complaints or Allegations

- 12.1 The Secretary shall receive the complaint or allegation (copy to the Chairperson of Governing Body) which must be in writing and signed by the person who is bringing the matter to the attention of the Governing Body. The Secretary shall forward a copy the complaint to the Member about whom the complaint has been made.
- 12.2 The Chairperson and Secretary of Governing Body shall assess in the first instance whether there is a *prima facie* case which should be referred to the Committee. In the event that a decision is taken that a *prima facie* case does not exist, a report to that effect shall be made to the Governing Body.
- 12.3 The Governing Body, on receipt of a complaint or allegation under this Code, shall appoint members to the Committee in accordance with Section 11 of this Code.
- 12.4 In the event that the Secretary and Chairperson are satisfied that there is *prima facie* a case which requires the consideration of the Committee, the Secretary shall forward the complaint to the Chairperson of the Committee and to the other members of the Committee, and shall advise Governing Body at its next meeting that a complaint or allegation has been so referred.
- 12.5 Depending on the gravity of the complaint and the findings of the Committee, such findings may be deemed by the Governing Body to constitute “good and valid reason” for removal of a Member from office in accordance with the Universities Act, 1997, *Schedule 3, Section 3 (1)*.
- 12.6 In a case where, for any reason, the Chairperson or the Secretary is unable to fulfill their responsibilities under this Procedure, the Deputy Chairperson of the Governing Body shall act on behalf of the Chairperson and the Registrar and Senior Vice-President Academic shall act on behalf of the Secretary.
- 12.7 The procedure to be followed by the Investigation Committee is attached at Appendix 1

13.0 Appeal

In the event that the Governing Body upholds a complaint or allegation against a Member, he /she may lodge a request to Government for the appointment of a Visitor to hear his/her appeal of the Governing Body decision.

14.0 Dissemination

The Secretary shall provide a copy of this Code to each Member .

Appendix 1

CODE OF PRACTICE FOR MEMBERS OF THE GOVERNING BODY AND GOVERNING BODY COMMITTEES

– PROCEDURES FOR THE INVESTIGATION of COMPLAINTS or ALLEGATIONS under this CODE OF PRACTICE

1. Guiding Principles

The procedure of the Committee for the Investigation of Complaints or Allegations is based on the following general principles:

- 1.1 Good Faith. The application of these procedures shall be fair, prompt, impartial, reasonable, consistent and applied without discrimination. All parties will be heard with courtesy and respect.
- 1.2 Confidentiality. Statements, letters and other communications shall be confidential to those involved in the procedure.
- 1.3 Representation. At any hearing under these procedures Members shall be entitled to be accompanied, as specified below.

2. Definitions

- 2.1 “Code” means the Code of Practice for Members of the Governing Body and Governing Body Committees. The definitions that apply therein apply here also.
- 2.2 “Committee” means the Committee for the Investigation of Complaints or Allegations established under the Code of Practice for Members of the Governing Body and Governing Body Committees.
- 2.3 “Complainant” means any person making a complaint or allegation

against a Member of the Governing Body or Governing Body Committee under this Code.

- 2.4 “Respondent” means any member of the Governing Body or a Governing Body Committee against whom an allegation or complaint is made under this Code.
- 2.5 “Representative” means a colleague or friend or other representative (authorized in advance by the Investigation Committee), of the Member against whom the complaint or allegation is made.
- 2.6 “Visitor” means the Visitor to the University as specified in the University Charter.

3. Process

In the event that the Chairperson and Secretary of Governing Body decide, following receipt by the Secretary of Governing Body of a complaint or allegation, that there is a *prima facie* case which requires investigation, pursuant to Section 12 of the Code, the following procedures shall apply:

- 3.1 The Chairperson of the Committee shall be advised of the decision of the Chairperson and Secretary of the Governing Body.
- 3.2 A hearing shall be convened by the Secretariat² of the Committee in consultation with the Chairperson of that Committee.
- 3.3 The Complainant and Respondent shall be advised that the Chairperson and Secretary of the Governing Body have examined the matter and consider that there is a *prima facie* case to be investigated.
- 3.4 The Complainant shall be advised that a hearing is to be held and that he/she will be required to attend.
- 3.5 The Respondent shall be notified of the complaint or allegation, shall be given full details of the complaint or allegation in writing together with all relevant documentation and shall be advised that a hearing is to be held and that he/she will be required to attend.
- 3.6 The Respondent shall be advised of the following:
 - (i) the membership of the Committee;

² Secretarial Support shall be provided to the Committee by the Office of Corporate and Legal Affairs

- (ii) his or her right to representation at the hearing, in accordance with 2.5 above;
- (iii) twenty-one days notice of the proposed hearing.

3.7 Both the Complainant and Respondent shall be given twenty-one days notice of the hearing with the opportunity to postpone the hearing once for a maximum of five working days, provided that the request to postpone the hearing is received by the Chairperson of the Committee not less than one week before the specified date. In extenuating circumstances the Committee shall have the discretion to agree a further postponement of the hearing.

4. Conduct of the Hearing

4.1 Legal representation may be permitted at the discretion of the Committee, such decision to be based on the gravity of the complaint or allegation under investigation (see 2.5 above).

4.2 Any witness whom the Respondent or Complainant proposes to call to the hearing must be identified to the Chairperson of the Committee not later than one week prior to the hearing to allow adequate notice of the hearing to be given to that person.

4.3 The Complainant shall be called and must make him/herself available for the hearing.

4.4 The Respondent shall be called to the hearing, shall be advised of the requirement to attend and shall be advised that failure to attend without good and sufficient reason may lead to a decision being taken in his/her absence.

4.5 The Chairperson shall commence proceedings by outlining the procedures to be followed and the issues to be considered at the hearing.

4.6 The Complainant shall be required to outline his/her complaint or allegation at the hearing.

- 4.7 The Respondent shall be called and shall be given an opportunity to respond to the complaint or allegation..
- 4.8 The Complainant may be questioned by the Respondent and/or his or her representative.
- 4.9 The Representative of the Respondent will be entitled to speak and to contribute to the hearing.
- 4.10 The Complainant and Respondent shall each have the opportunity to make a closing statement prior to the conclusion of the hearing.

5. Decision

- 5.1 The Complainant, Respondent and their respective Representatives shall not be present during deliberations of the Committee.
- 5.2 The Committee shall deliberate on the complaint and the content of the hearing and prepare a report to the Governing Body, which report shall include findings and may include recommendations.
- 5.3 The decision of the Committee shall be based on a unanimous or majority vote which must include the vote of the Chairperson of the Committee. In the event that a decision cannot be reached by the Committee, this outcome shall be conveyed to the Governing Body.
- 5.4 If the finding(s) or recommendation(s) are not unanimous, a minority report may be appended to the report to the Governing Body.

6. Record of Hearing

- 6.1 A summary of the proceeding of the hearing shall be prepared by the Chairperson of the Committee and circulated to both the Complainant and the Respondent within ten days of the hearing.
- 6.2 The Chairperson shall forward the report of the Committee to the Secretary of the Governing Body.

7. Malicious or Vexatious Allegations

In the event that the Committee finds that a malicious or vexatious allegation has been made by a Member of the Governing Body or a member of staff of the University, that finding shall be reported to the Governing Body.

8. Notification of Outcome

- 8.1 The report of the Committee shall be circulated to Members of the Governing Body not less than fourteen days before the meeting at which the report is to be considered.
- 8.2 The Respondent and Complainant may make a further written submission to the Governing Body up to seven days prior to the meeting at which the report of the Committee is to be considered by the Governing Body. Any such submission shall be circulated by the Secretary of Governing Body on receipt up to the deadline for such submissions.

9. Deliberations of the Governing Body

- 9.1 The Governing Body shall consider the report of the Committee at its next meeting.
- 9.2 The finding(s) or recommendation(s) of the Committee may be accepted or rejected, but may not be varied, by the Governing Body in full session.
- 9.3 Depending on the findings and recommendations of the Committee, Section 12.5 of this Code of Practice may be applied.