UNIVERSITY OF SHEFFIELD

COUNCIL EFFECTIVENESS REVIEW

SEPTEMBER 2020

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1.   **SCOPE OF THE REVIEW**

We were appointed by the University of Sheffield to carry out a review of the effectiveness of the University Council.

The introduction in 2018 of the new student-facing Higher Education Regulatory Framework (Regulatory Framework)[1] and the requirement to register with the Office for Students (OfS) has increased the focus on university governance, because it is the governing body (and not the chief executive, for example) that is responsible to the OfS for ensuring the University's ongoing compliance with the conditions of registration.

It has long been considered good practice for university governing bodies to carry out regular reviews of their effectiveness. It is now cited in the Regulatory Framework as an indication of compliance with the leadership and management regulatory condition: "*the provider regularly reviews the adequacy and effectiveness of its own governance arrangements, with external input…and takes appropriate action*"[2].

The University last carried out a review of Council effectiveness in 2016, with the final report and associated action plan being approved by Council in November 2016. The majority of the 6 key recommendations and 39 sub-recommendations arising from that review have been implemented. We have commented in this report where we consider that recommendations from that review are still relevant.

Council approved the scope of our review in February 2020 and established a Task and Finish Group (Review Group) to oversee the process. The agreed scope was to focus on the external regulatory framework and statutory responsibilities that sit alongside those that Council has assumed under the CUC Higher Education Code of Governance[3] (CUC Code) and through its own statement of primary responsibilities. The purpose was to make recommendations to Council on the governance structures, processes, reporting systems, culture and behaviours at the interface between the Council and other University bodies, which will better enable the Council to discharge its role in:

(a)   Delivering the University strategy for the University by considering Council's resilience and adaptability to address the immediate and subsequent impact of challenges arising from Covid-19 and to support future strategic delivery, ensuring the new strategy (once adopted) can be achieved.

(b)   Operating within and as part of the new regulated environment by considering the range of key expectations on governing bodies that including, but not limited to, the OfS requirements. In particular we were asked to evaluate whether Council is achieving an appropriate balance between strategic discussion and its wider regulatory and charitable trustee responsibilities, and its awareness of and oversight and assurance about OfS requirements.

(c)   Delivering the University's continued future success, including by providing confidence in institutional governance internally to staff and students in a collegial environment; providing external confidence to key statutory bodies, regulators and funders and providing external confidence to a range of stakeholders and interest groups.

The Review Group clarified that in terms of the review, "effectiveness" means the effectiveness of Council in the context of governance, i.e. Council's ability to receive, consider and assure itself over the delivery of strategic objectives and regulatory duties, including Council's operation, members' interactions, skills balance, and adaptability.

The Group also discussed what was out of the scope of the review, to add clarity, including succession planning for the Chair of Council and the current membership of the Council.

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[1] Securing student success: Regulatory framework for higher education in England, February 2018
[2] Regulatory Framework, paragraph 450
[3] We have assessed the University's compliance with the proposed new CUC Higher Education Code of Governance, as published for consultation earlier this year. We have assumed that the final published Code will be in a substantially similar form to the consultation draft. We recommend that Council reviews its response to our recommendations against the final version of the Code once published. We are happy to support this process as necessary.

We have commented on the matters listed above throughout our report, as appropriate.

Whilst we reviewed compliance against all the above areas, we have prepared this report on an "exceptions reporting" basis, that is to say we have not described all the ways in which governance at the University is already compliant with these requirements, but only where we consider that there are further or different steps that Council could take to enhance its effectiveness. We have however specifically identified a number of features of good practice.

It should be remembered that the OfS's expectation is that the provider should "*regularly review[s] the adequacy and effectiveness of its own governance arrangements, with external input*". Accordingly, our report forms only part of the process by which Council reflects upon the adequacy and effectiveness of its governance. Our recommendations are based on what we observed during our review and our experience of governance elsewhere, but it is for the Board to decide whether to adopt them or whether to take alternative or additional steps to assure its own effectiveness.

2.   **METHODOLOGY**

We were asked to submit a proposal for the review and were appointed in January 2020. Our team comprised two specialist education lawyers.

Our work took place between March – August 2020 and comprised the following:

- Meetings with Review Group

  We attended meetings of the Review Group on 31 March, 4 June and 22 July 2020, held by video conference.

- Document review

  We were able to access documents available on the University's website, including constitutional documents and minutes of Council meetings. We were also provided with additional documents on request, including OfS registration papers and a full set of papers for both Council and Senate.

  A full list of the documents reviewed is set out at Appendix 2.

- Interviews with members of UEB

  We carried out interviews (by telephone or video conference) with 10 of the 12 members of UEB, including the President & Vice-Chancellor, the Provost & Deputy Vice-Chancellor and the Chief Financial Officer.

- Circulation of questionnaire to members of Senate

  Questionnaires were sent to each member of Senate and we received 20 responses, including a number of specific comments which are reflected in this report. A summary of the responses is set out at Appendix 3.

- Interviews with members of Council

  We carried out interviews (by telephone or video conference) with all members of Council except for the student representative.

We submitted our draft report for consideration by the Review Group on 18 August 2020.   Feedback from the group was incorporated into a revised draft of the report which was considered by the Review Group on 9 September 2020. At that meeting some further revisions were agreed which were incorporated into the final version of the report.

We would like to thank everyone at the University who contributed to the review for their time, enthusiastic participation and constructive comments, and the University Secretary and his team for their excellent help with the practical arrangements.

3.   **EXECUTIVE SUMMARY AND KEY FINDINGS**

It was clear from our review that the University is a very well governed and managed institution. Its governance is undeniably effective and our recommendations are therefore largely to assist Council in determining how it might operate at an even higher standard.

Council members have a wide range of skills, are passionate about the University and are committed to their role in supporting the University's work.

The strength in governance has proved extremely valuable during the current COVID-19 crisis, where Council and UEB have successfully adapted their processes to accommodate the ever-changing situation.

In relation to legal and regulatory compliance and the OfS Regulatory Framework, in particular (a key focus area of our work), we found that:

- Council was fully involved throughout the OfS registration process and the transition to becoming part of a regulated sector
- the University has a well-developed approach to compliance and assurance, with many features of good practice, through regulatory mapping and excellent support from the University Secretary and his team
- Council members are currently happy with the balance between regulatory matters and other strategic issues

Examples of good practice

Governance is fully compliant with current sector guidance, and we found several examples of good practice, such as:

- the introduction of the OfS Operating Framework Conditions Compliance Register and the Compliance Assurance Framework
- the establishment of a Senate Academic Assurance Committee and other measures already taken to strengthen academic governance
- the routine inclusion of the student member of Council, even where confidential matters are being discussed
- the review of Council papers for publication as part of the agenda for each meeting

Recommendations

This report makes 16 recommendations of actions which Council could consider to further enhance its effectiveness. These include:

Area	Recommendations
Regulatory framework & wider statutory/legal responsibilities	• Further training and development for Council members on the Regulatory Framework
Strategy	• Development of appropriate performance indicators for the new strategy • Ensuring all of the skills necessary to oversee the successful delivery of the strategy are represented on Council
Resilience and adaptability	• Consideration of whether the changes to Council's practices implemented as a result of the pandemic should be continued • Review of the Scheme of Delegation in relation to Council committees

Academic governance	• Building a broader relationship between Council and Senate
Student voice	• Ensuring that Council is able to hear about the needs and priorities of all student groups
Membership and proceedings of Council	• Taking steps to diversity the membership of Council, as a priority • Facilitating more discussion and constructive challenge from all Council members • Written standing orders, guidelines for writing reports for Council and formal monitoring of agreed actions • Publication of minutes of Council committees, unless confidential

Our recommendations are set out in blue throughout the report, and are also listed in Appendix 1.

4.   **GOVERNANCE STRUCTURE**

The University is a chartered corporation which was incorporated by Royal Charter in 1905. It is an exempt charity and is registered with the OfS with approved fee cap status.

The governance structure of the University is set out in the Charter, Statutes and Regulations.

Under the terms of the Charter, Council is the governing body of the University and is responsible for the management of the University and the conduct of all the University's affairs. Members of Council are charity trustees and are therefore required to comply with charity law in addition to a wide range of other legislative and regulatory requirements.

The other main governance body of the University as prescribed in the Charter is the Senate. The Senate is the supreme academic authority of the University and, subject to the control and approval of Council, is responsible for overseeing the teaching and research of the University and the admission and regulation of students.

The day-to-day management of the University is led by the President & Vice-Chancellor, who is also the accountable officer as required by the OfS. The President & Vice-Chancellor is supposed by the wider University Executive Board (UEB).

The constitution of Council is set out in Statute 3. The current membership[4] is:

- Class 1: ex officio three Pro-Chancellors (including the Chair of Council), President & Vice-Chancellor, Treasurer
- Class 2: three senior academic officers (Provost and Deputy Vice-Chancellor, Vice-President for Education, Vice-President for Research)
- Class 3: seven independent members
- Class 4: three members of the Senate (two Professors[5] and one other)
- Class 5: one member of professional staff
- Class 6: President of the Students' Union

Under the terms of Statute 4 Council is responsible for the conduct and activities of the University and shall exercise all the University's powers. Those powers and functions are further detailed in Regulation II.

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[4] As at 1 August 2020
[5] Currently one vacancy

5. REGULATORY FRAMEWORK & WIDER STATUTORY/LEGAL RESPONSIBILITIES

The introduction for the first time of a regulator for higher education in England was a significant development for any university providing publicly funded education.

The Regulatory Framework sets out the initial and ongoing conditions of registration with the OfS It is supplemented by a number of Regulatory Notices and Regulatory Advice documents, issued periodically by the OfS, on issues such as access and participation plans, charity law compliance, reportable events and monitoring and intervention.

The four primary regulatory objectives of the OfS, which form the basis of the Regulatory Framework, are "*That all students, from all backgrounds, and with the ability and desire to undertake higher education:*

1. *Are supported to access, succeed in, and progress from, higher education*
2. *Receive a high quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure.*
3. *Are able to progress into employment or further study, and their qualifications hold their value over time.*
4. *Receive value for money.*"[6]

The Regulatory Framework was designed to influence the work of governing bodies. As OfS Regulatory Advice 15 says: "*It is the responsibility of the governing body of a registered provider to ensure that it continues to satisfy the ongoing conditions of registration.*"[7] Under the CUC Code, the requirement is expressed as follows: "*the governing body…needs assurance that the provider meets all legal and regulatory requirements imposed on it as a corporate body*".[8]

A key part of our remit, therefore, was to consider whether Council understands what assurances it needs in order to fulfil this responsibility, what information it currently gets, how confident members are to process/understand what that information is telling them, and what more they need or want to see. For the reasons set out below, we consider that Council is fulfilling its duties in this area effectively, and its engagement with the Regulatory Framework is as good as we have seen anywhere in the sector. We have however highlighted two areas that Council may wish to keep under consideration to further enhance its effectiveness.

It was clear to us that members of Council had been kept well informed of the steps being taken to ensure that the University was complying with the Regulatory Framework. There are regular references to it in the minutes of Council meetings, especially at key points such as the application process and the recent changes to regulatory requirements during the COVID-19 pandemic. In addition, Council has been provided with an OfS Operating Framework Conditions Compliance Register, a document which provides an overview of the registration conditions, which member of UEB is responsible for ensuring compliance and the current compliance status. The compliance status for each condition is assessed as green (fully compliant), amber (internal concern or awaiting an OfS decision) or red (matter reported to OfS or OfS has raised a concern). Through this, members of Council can readily see where the principal areas of regulatory risk are, and we regard it as a feature of good practice at the University.

This approach has recently been extended to other legal areas for which the Council is responsible through the development of a Compliance and Assurance Framework, which sets out in relation to each compliance obligation who the responsible person is and what assurances are provided to Council or the relevant committee of Council. Again, we regard this as good practice because it gives Council a single reference point to understand how it will be assured that the University is meeting its legal obligations across the full range of compliance areas.

The Audit Committee has also engaged the University's internal auditors in carrying out a review of regulatory compliance in the context of the OfS requirements, and through this the Council as a whole has received wider assurance about the reliance that can be placed on compliance by the responsible executive person.

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[6] OfS Regulatory Framework, paragraph 3
[7] OfS Regulatory Advice 15, paragraph 14
[8] CUC Higher Education Governance Code (consultation draft), paragraph 1.1

It was clear that the University Secretary and his team are extremely proactive and thorough in alerting Council to issues relating to the Regulatory Framework, and every interviewee had a great deal of confidence in the support received from the University Secretary and his team in this area. A few of those we interviewed commented that the reliance that is placed on the holder of this role will in due course make succession planning a very important process, to ensure that the quality of support continues.

A number of our interviewees also positively commented on the fact that having an independent Council member with substantial experience of leadership in a higher education context gave additional confidence that Council as a whole could discharge its obligations under the Regulatory Framework.

There was evidence of members actively reflecting on and providing feedback on the assurances provided to them, for example by making a number of suggestions in relation to the Senate's Annual Academic Assurance Report, which demonstrates that members are applying their own minds as to whether the University is continuing to satisfy its registration conditions.

Members also applied their own understanding of regulatory and compliance risk in areas within their own experience and background and used this to test and improve how the University manages discrete areas of legal compliance. Several members of Council have significant legal and/or regulatory expertise and are therefore able to support effective oversight by Council of the University's compliance obligations. Both health and safety and cyber-security were mentioned to us by multiple interviewees as areas where Council had proactively begun a conversation about the University's compliance obligations and how they were being met. It was less clear from our interviews that members of Council would feel as able to proactively raise issues relating to the Regulatory Framework itself. Because of the quality of support offered in this area by the University Secretary and his team, and the fact that there is a member with higher education experience who is very familiar with the Regulatory Framework, this does not in our view raise any concerns about Council's effectiveness in this area, but we think Council should consider whether it would like to get to a point where its wider membership can be as proactive in this compliance area as in others. If so, that might necessitate some training and development work. This is because, consistent with our experience of governing bodies across the sector, feedback from members was mixed as to their direct knowledge and understanding of the Regulatory Framework and the assurances they should be seeking.

We were also asked to consider whether there was a risk that focus on compliance areas meant that there was less and/or insufficient time to deal with other aspects of Council's role, especially in terms of oversight of the University's strategy. Generally, the feedback from those we interviewed was that the balance was "about right". However, there were a number of caveats to that:

- Several interviewees observed that the volume of matters for which Council is ultimately responsible has increased over recent years (principally at the behest of regulators and policy makers) at the same time as the wider higher education environment has become increasingly volatile, necessitating a greater need to plan for the University's long term success. There was therefore some anxiety that a tipping point would soon be reached and that could jeopardise the effectiveness of governance. We note that more recent communications from the OfS (for example its letter to providers of 30 July 2020) indicates that it may finally be moving towards a true risk-based approach to regulation, which may ease the regulatory burden for well-led institutions such as the University. If so, the tipping point may in any event recede.

- A small number of interviewees felt that although the focus at Council level on the OfS Regulatory Framework to date had been at an appropriate level for a new regulatory regime, they would expect it to decline as the University's response to and understanding of risk under the framework became more established.

- A small number of interviewees were concerned that they were at risk of spending more time thinking about the requirements of the regulator than about the University's beneficiaries.

- Some interviewees felt that the sheer volume of matters on each meeting agenda was so great that they were less inclined to ask questions or raise concerns, to ensure that the agenda could be

completed. This may mean that otherwise relevant contributions are not being made or that gaps in members' understanding are not being addressed.

These observations suggest to us that Council should consider as a group on an ongoing basis whether the time spent on dealing with compliance matters remains proportionate.

Our conclusion is that Council is fully compliant with its regulatory obligations and its engagement with the Regulatory Framework is as good as we have seen anywhere in the sector.

Recommendations:

Council should consider further development and training for members on the Regulatory Framework, in particular how it links with their wider duties as governors and trustees, for example in relation to the University strategy.

Council should consider on an ongoing basis whether the balance between the time spent on regulatory matters and that on its strategic role remains appropriate.

6.   STRATEGY

One of Council's primary functions as set out in Regulation II is to: "*develop and approve the mission and strategic vision of the University, long-term academic and business plans and key performance indicators, and to ensure that these meet the interests of stakeholders*".[9] In addition, under the draft Code of HE Governance Council's responsibility for the University strategy is expressed as follows: "*Working with the executive, the governing body sets the mission, strategic direction and values of the institution. It receives assurance that delivery of the strategic plan is in line with legislative and regulatory requirements, institution values and wider institutional policies and procedures and that effective systems of control and risk management are in place.*" The proposed new CUC Code sets out the duty to assess performance against the strategy as follows: "*The governing body will need to receive regular, reliable, timely and adequate information to monitor and evaluate performance against the strategic plan*". Under the Regulatory Framework, acting in accordance with governing documents and relevant codes of governance is seen as a feature of compliance.

The University is in the process of adopting a new institutional strategy, following the appointment of the new President & Vice-Chancellor in 2018. This has been under development over a number of months, led by the President & Vice-Chancellor and the UEB, but with extensive consultation with staff and students. Those we interviewed confirmed that Council had been kept informed of the thinking behind the strategy and had had opportunities to discuss and comment on the direction of travel as the strategy was being developed.

As a result of COVID-19, the presentation of the strategy to Council was delayed until its meeting on 13 July 2020. Ordinarily, there would have been an opportunity to consider the strategy in detail at a Council Away Day but because of COVID-19 restrictions, this has not happened.

All those we interviewed agreed that the next stage, the development of an implementation plan and performance indicators, would be critical to the success of the strategy and that it would be Council's responsibility to assess performance and to hold UEB to account against the agreed indicators.

The following observations were made which we believe Council should consider further:

- Several interviewees said they would welcome further opportunities to discuss what they felt were the "big strategic questions" facing the University, such as what its international strategy should be (specifically in relation to a perceived dependency on China) or how it should deal with increasing risks in relation to pensions. Although these issues have formed part of the agenda at Council meetings from time to time, these members felt there was not sufficient time through this route to discuss them thoroughly.

- Some interviewees felt that COVID-19 had shown how quickly quite radical changes could be implemented and that, therefore, Council should push for as demanding an implementation plan and performance indicators for the new strategy as possible. Against this, some felt that the culture of universities in general meant that change would need to be slower and more incremental in order to secure the buy-in of staff.

- Some interviewees felt that some of the skills needed to oversee the new strategy were not currently represented on Council. Organisational development and change and international experience were highlighted as examples.

Council should consider how it can accommodate the desire of members to spend more time discussing what they see as the "big issues" facing the University. We understand that the pre-meeting briefings and post-Council dinners are already used for this purpose, so this may be more of a question of ensuring there is agreement amongst the members what the big issues are and visibility of when and how they will be able to discuss these over the annual cycle of business.

Council should make sure that its skills matrix reflects all the skills needed to oversee the successful delivery of the University strategy, and ensure that any key skills that are not currently represented in its membership are prioritised in its succession planning.

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[9] Regulation II, paragraph 5.1

Recommendations:

Council should (working with UEB) develop appropriate performance indicators for the new strategy and record what information it needs to be able to monitor and evaluate performance against the strategic plan.

If there is a general consensus that there needs to be more time for discussion or debate around key issues, Council should consider how these might be accommodated within Council's established ways of working.

Council should review its skills matrix and ensure that all the skills needed to oversee the successful delivery of the University's strategy are represented around the table. If necessary its succession planning needs to be re-profiled to prioritise any key skills gaps.

7.   **RESILIENCE AND ADAPTABILITY**

The impact of COVID-19 has created a form of "living laboratory" in which to assess Council's resilience and adaptability in addressing the immediate and subsequent impact of challenges arising from the pandemic and how this experience can help it support strategic delivery and discharge its wider role in the future.

The papers for the Council meeting on 13 July 2020 contain a detailed and thorough report on the ways in which Council business has been modified in response to COVID-19, and we also discussed this in our interviews.

Broadly, Council's response to the pandemic has been:

- Based on clear agreed principles, such as ensuring the University's legal and regulatory obligations continue to be met and that established lines of accountability and responsibility continue to be observed wherever possible.

- Prioritised and risk-based, for example by ensuring that non-essential business has been identified and deferred or delegated in a careful and planned way so that it can be picked back up at the appropriate time without any long-term damage to the University's interests, and by making sure that papers are brief and to the point.

- Flexible, with changes to how meetings are conducted, how material is presented to meetings, how decisions are made (e.g. by correspondence where needed) and how urgent business is handled.

- Supportive, by removing unnecessary burdens on UEB and other executive roles, and by ensuring that Council's own meetings and business are conducted with the welfare, including the mental health, of members in mind.

Those we interviewed felt confident that the methods of working adopted during the pandemic had enabled the interests of the University, its staff and students to be protected as best they could be in the circumstances.

Several of those we interviewed were keen to see the continuation of some of the modifications to how Council has operated during this period, although it is fair to say that others were looking forward to a return to as close to "normal" practices as possible. For example, whilst many were supportive of continuing with some virtual meetings and in particular the informal briefings that have been taking place, a few wanted to return to fewer, longer face-to-face meetings as soon as reasonably possible. The reduction in the volume of paperwork and the increase in verbal presentations were also supported by many, as further detailed at section 10.4 below. It seems to us, therefore, that there needs to be a consensus reached on whether the aim should be to return to as close as possible to the pre-pandemic ways of working, or whether there is an appetite to do things very differently.

An interesting piece of feedback from some members was that the pandemic had highlighted very clearly and in a practical way the distinction between management and governance. Management had needed to focus, rightly, on developing a practical response to the challenges posed by the pandemic, whilst the governing body was there to support and stress-test the management response, but also to start to think about the longer term consequences of the pandemic in the light of the other strategic priorities for the University, for example the impact on the University's international strategy, or a more permanent move to online delivery.

It seems to us that there are therefore a number of very useful learning points that could be taken from the COVID-19 response to influence the way Council discharges its role in supporting the University strategy longer term, such as:

- A blend of in-person and virtual meetings

- Encouraging electronic attendance at in-person meetings, particularly where this means a member is able to attend rather than to give their apologies

- More opportunities for members to receive briefings and discuss issues of interest or concern to them, especially around the University's strategic priorities

- A reduction in the amount of paperwork and a greater use of short focussed presentations

- The greater use of delegation to free up Council's time to deal with the "big issues"

Recommendations:

Council should reflect on the changes to its practices necessitated by COVID-19 and determine which, if any, it wishes to continue or adapt on a longer term basis. In particular, Council should consider the format and frequency of its meetings.

Council should reflect on the role of its committees and review the current Scheme of Delegation, to ensure that these are optimal for the way it wishes to work in the future.

8.   **ACADEMIC GOVERNANCE**

The introduction of the Regulatory Framework continued a shift in emphasis on academic governance in the work of university governing bodies. The express requirement under the public interest governance principles is: "*The governing body receives and tests assurance that academic governance is adequate and effective through explicit protocols with the senate/academic board (or equivalent).*"[10]

However, the requirements of the Regulatory Framework requiring oversight from Council include not only what might be thought of as the traditional aspects of academic governance, such as quality and standards and student complaints, but also matters relating to students more widely, such as access and participation, consumer protection law and student protection. It is also clear that many of the areas that continue to pre-occupy regulators and policy makers in relation to the sector relate to academic governance: grade inflation, unconditional offers and "low quality provision", for example. This is however an area where governing bodies traditionally have less experience and expertise, and so many universities are still working out how best to discharge the oversight role in this area.

The previous Council effectiveness review made a number of recommendations in relation to academic governance, and substantial work has already been done at the University to address this agenda. It has a member of the Council with substantial and current experience of higher education. In 2017/18 a Task and Finish Group was established to consider how Council could discharge its oversight role in this area. The recommendations of that Group included the establishment of a Senate Academic Assurance Committee, the production of an annual Academic Assurance Report summarising the work of Senate throughout the year, and setting up a "twinning" arrangement whereby independent members of Council would be partnered with Vice-Presidents of Faculty. These are features of good practice.

The first Academic Assurance Report since the Task and Finish Group's work was presented to Council in November 2019, and feedback has been provided to inform its production in future years. The twinning process was well received by those we interviewed, although actual engagement between the pairings varied. Some had met with and spoken to their "twin" regularly, while others had had an initial set of meetings but then little follow up. All felt that it was a potentially useful way for independent members to better understand the "academic" business of the University, which it was generally agreed was necessary for Council members to discharge their governance role more efficiently.

As part of our review, we looked at the strength of the relationship between Council and the Senate. We did this through a questionnaire to members of Senate and interviews with Council and the UEB. The response rate to the questionnaire was not high (around 25%), but some of the comments gave interesting insights into how the relationship is perceived by members of Senate. The responses to the interviews were however unanimous that, outside the specific measures implemented by the Task and Finish Group, there was no real relationship between Council and Senate despite some shared membership and reciprocal reporting of the work of each body. Most of those we interviewed felt that a better relationship between the two bodies was important, both from the perspective of meeting the expectations of the Regulatory Framework, but also to ensure that the University's new strategy could be effectively delivered.

It was clear from our interviews that there is a lack of understanding about the role of the three Senate nominees on Council, and in particular the role they could play in developing the relationship between Council and Senate. This point was also raised in the previous Council effectiveness review. Whilst Senate nominees on Council are of course full members of Council like any other, and are not there to act as "representatives" of Senate, there may be scope for them to play a greater role in raising awareness amongst Council members generally about the work of Senate.

A stronger relationship between Council and Senate is important not only from the point of view of Council's assurance over matters of academic governance, but also in providing confidence in institutional governance internally to staff. We have seen the following measures adopted at other universities to build such a relationship:

• Appointing an independent member of Council as an observer at Senate, to act as a link between Council and Senate

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[10] OfS Regulatory Framework, Annex B, paragraph IV

- Hosting joint seminars and training events between Council and Senate

- Attendance at a meeting of the Senate as part of the induction/development of each Council member

- An annual presentation by members of Senate to Council once a year on academic strategy and other academic matters

- An annual meeting where Senate members can hear from a group of Council members about the work of Council and can ask questions and raise any issues they wish to

- Inviting a different member of Senate to each Council meeting as an observer (with appropriate safeguards as to confidentiality), as a development activity to assist Senate in understanding the role of Council

- A joint strategy session of Council and Senate

- Organising bi-annual lunches for Council members, allowing the Senate nominees to meet other Council members in a slightly more informal setting.

Recommendation:

Council should consider how to build a broader relationship with Senate and adopt appropriate measures. This should include clarification of and a greater role for the Senate nominees on Council.

9.   **STUDENT VOICE**

A key element of the public interest governance principles which form part of the Regulatory Framework is that students should have opportunities to engage with the governance of the University, allowing for a range of perspectives to have influence.[11]

Unfortunately, despite extensive efforts to contact the former President(s) of the Students' Union, we were unable to interview any Students' Union representatives during the course of our review. However, those we interviewed from Council and the UEB gave their perspective on the student voice in governance.

Outside of Council, we understand that the relationship between UEB and the Students' Union is extremely strong, and interviewees contrasted it favourably with the adversarial and dissonant relationships they had seen elsewhere in the sector. The Students' Union is recognised as one of the leading students' unions in the sector in terms of its work for students, and is regularly voted as such in student surveys. Given the (possibly unique) strength and positivity of the relationship between students and the Students' Union, we think this could provide a very effective way to support student engagement in governance.

The membership of the President from the Students' Union on Council, together with the attendance of the additional Students' Union observer, clearly provides an important route for such engagement. The student member of Council is routinely included in meetings even when confidential agenda items are discussed, which is good practice.

There is no standing Council agenda item for a presentation by the student member on the work of the Students' Union or student issues more generally. This is something which many institutions use as a way of providing assurance to Council that "*there is regular effective two-way communication with students…and that they are advised on any major issues arising.*"[12] Other institution consider a report once a year from their students' union on its activities, plans and priorities.

Feedback from our interviews indicated that both the Students' Union member and observer were encouraged by the Chair to participate fully in meetings and generally did so effectively, although, as always, there were slight differences depending on the personality, priorities and communication styles of the specific individuals holding those offices from time to time.

Currently, the student member of Council sits on the Finance Committee, but there is no student representation on any other Council committees. This is increasingly viewed as good practice throughout the sector, and is another way of engaging the student voice within the University's governance structure.

A repeated theme in our interviews was whether Council heard the voice of all students, and in particular whether the specific needs of postgraduate, overseas and "atypical" students were sufficiently clear to Council. Whilst the Students' Union represents the whole of the student body, feedback during our interviewed identified the differing needs and priorities of specific groups who may not routinely engage with the Students' Union, and the need for Council to satisfy itself that it hears sufficiently about their priorities and feedback on the governance of the University.

Another key element of the public interest governance principles is the requirement that the governing body "*ensures that there are adequate and effective arrangements in place to provide transparency about value for money for all students and (where a provider has access to the student support system or to grant funding) for taxpayers.*"[13] Value for money for students is likely to be an increasing area of focus for the OfS and it will be important for the University to continue to demonstrate that it has taken full account of students' views as the regulatory focus on this evolves. Some members described this as one of the "big issues" they would like to understand better and discuss more fully, as discussed in the section on strategy above. Council should therefore continue to consider if there are additional or alternative ways that the student voice can be made audible at board level, particularly in terms of the needs of all student groups, investment priorities and value for money.

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[11] OfS Regulatory Framework, Annex B, paragraph III
[12] CUC Higher Education Code of Governance (consultation draft), paragraph 6.2
[13] OfS Regulatory Framework, Annex B, paragraph VI

For Council's information, relevant measures that we have seen adopted or considered at other institutions that may be of interest include:

- A student forum (a standing meeting between members of the Council and students, led by the Students' Union)

- Members of Council attending the annual Students' Union meeting as observers to hear first-hand what matters are of concern to students

- The appointment of student members to Council committees, with appropriate support

- Involving students studying in relevant areas with institutional projects: for example business students helping to develop the University's business-facing strategy

Recommendation:

Council should satisfy itself that the current measures for student engagement enable it to hear about the needs and priorities of all student groups.

10. MEMBERSHIP AND PROCEEDINGS OF COUNCIL

10.1 Diversity

A review of the membership of Council was not part of the scope of our work. However, nearly everyone we interviewed commented that Council is lacking in diversity, particularly in relation to race, but also gender and other protected characteristics. A few also commented that many Council members were themselves alumni of the University and that diversity of university experience would also be helpful, although it was also acknowledged that there were benefits to having alumni members. We are aware that the University is already making concerted efforts to address the diversity of Council, that it recognises the value of diversity at board level and that it is making some progress.

Diversity ensures that a range of different perspectives are taken into account in decision-making. Furthermore, board diversity is extremely important in providing assurance to staff, students and civic stakeholders that the governance of the institution takes into account the experience and needs of different communities. Securing the confidence of these groups will be particularly important as the University implements the change agenda that underpins the strategic plan.

The CUC Code identifies inclusion and diversity as one of the six primary elements of higher education governance, and advises governing bodies to "*promote a culture which supports inclusivity and diversity across the provider, including the composition of the governing body. This includes ensuring underrepresentation and differences in outcomes are challenged and where practicable corrective action is taken.*"[14] While we recognise that this area is taken seriously by Council, we note that the lack of diversity at Council level was highlighted in the previous review and that the effect of movements such as Black Lives Matter and #MeToo since then has been to focus and concentrate minds on diversity issues in higher education. We therefore believe that this should be seen as a priority for Council.

Steps that other institutions have used in this area include:

- Diversifying the use of external search consultancies

- Ensuring all those involved in recruitment have had unconscious bias and diversity and inclusion training

- Developing a diversity action plan for Council and committee appointments, with agreed targets and/or indicators to track and review progress

- Ensuring recruitment literature emphasises the desire to increase diversity

- Ensuring that the qualifications and experiences Council expects prospective members to have are sufficiently flexible to reflect the skills and backgrounds of people from diverse backgrounds, and providing individuals who are otherwise appropriately qualified for the role with additional support to address any variance as necessary

- Ensuring that induction processes support members from diverse backgrounds to participate effectively, including those who may have less experience

- Modifying how Council conducts its business to support members from diverse backgrounds, for example by changing the timings of meetings or by permitting virtual participation, which may widen the pool of potential recruits

- Promoting and encouraging the right to recover reasonable expenses associated with attendance at Council meetings to make the role more accessible, e.g. for those with childcare responsibilities.

Recommendations:

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[14] CUC Higher Education Governance Code (consultation draft), page 6

10.2   Challenge -v- support

A number of those we interviewed commented on the important role constructive and robust challenge from Council plays in ensuring it discharges its oversight roles. Some felt that to date Council has been more supportive than challenging (although it should be noted that during the period of COVID-19 related disruption, there was general agreement that support, rather than challenge, was the correct approach). This was especially true of those who had recent experience of governance at other institutions both within and outside the sector, who felt that these other boards tended to have more discussion and challenge. This issue was raised in the previous review of Council effectiveness.

Specific observations we heard included:

- The formality of Council meetings sometimes made it hard to raise concerns, despite the efforts of a highly experienced and expert Chair and the opportunities to raise concerns ahead of the meeting.

- It was clear that there is a lot of discussion and challenge at the meetings of the various committees of Council, and so consideration should be given to how this could be encouraged during Council meetings for those issues that are for consideration and decision by Council as a whole.

- Some members were not sure how to put items "on to the agenda" if they had concerns.

- Some members observed that there was a risk that discussion at meetings was predominantly from the same small group of members, whilst some other members said very little.

- A small number of members felt that the sheer volume of items on the agenda meant that they were reluctant to ask questions and/or discuss issues in case it made the meetings even longer.

The issue of the appropriate balance between challenge and support may become particularly important in supporting the University to deliver its new strategy. In case it is of interest to Council, in some universities and other sectors we have worked with, governing bodies have adopted steps such as:

- Including a specific time for questions at the end of each agenda item

- The Chair formally asking each member to comment as part of the discussion of significant items

- At the end of each meeting or periodic meetings, setting aside time to review how the meeting has gone and whether members felt sufficiently able to raise any concerns or questions and, if not, how these might be handled in the future

Recommendation:

Council should consider how it can facilitate greater opportunities for members to discuss issues and provide constructive challenge.

10.3   Conduct of meetings

Council does not have a set of 'standing orders' or other similar procedures which set out how meetings of Council or its committees are to be conducted. We understand that meetings are conducted in accordance with agreed practice and, where a given situation requires it, a decision is taken by the Officers' Informal Group on the advice of the University Secretary.

The lack of any written procedures to govern the conduct of meetings is in our experience unusual within the sector. A key element of the management and governance principles of the Regulatory

Framework is transparency,[15] and it is standard practice for governing bodies to set out in writing procedures dealing with how agendas are set, when papers will be circulated, how late papers will be dealt with, how matters falling for decision between meetings will be dealt with (by correspondence or Chair's action), arrangements for chairing when the Chair is absent, quorum and voting, electronic participation and other similar matters. The CUC Code states: "*The Secretary (or Clerk) is responsible to the governing body for the provision of operational and legal advice in relation to compliance with governing instruments, including standing orders.*"[16]

We understand that the rationale for not having written procedures is that being very prescriptive about how things are done can cause problems when an unforeseen situation arises, and there is some force to this argument. However, there is also a risk that not having a written procedure means that the decision-making body is unable to evidence that the decision was properly made. In our experience, regulators and other interested parties such as funders often ask for copies of written procedures as proof that the relevant procedural steps were followed. This is particularly relevant where decisions are made not at a formally-minuted meeting but by some other means, such as by correspondence. For example, what rules apply to such decisions? Do the usual quorum and voting requirements apply, or is unanimity required? Does a lack of response from a member indicate consent? These are matters which need to be decided and, ideally, set out in a written procedure which is clear to all, although such procedures do not need to be overly detailed or prescriptive.

Recommendation:

Council should introduce appropriately detailed, written standing orders to govern the conduct of its meetings, and those of its committees.

10.4   Council papers

There was almost unanimous feedback from those we interviewed that the volume of paperwork for Council meetings is too large, both in terms of the number and the length of papers. This is despite the move to the electronic circulation of papers and the introduction of the 'Reading Room' for background materials.

This is a universal complaint amongst members of university governing bodies, and it is difficult to strike an appropriate balance between providing the necessary information without overwhelming Council members. However, a number of members commented negatively on the significant amount of time required to read all of the papers for a Council meeting, and it is therefore important that this issue is kept under review.

There is a template cover sheet for Council reports, and these are consistently used. In terms of the content of the papers themselves, there is guidance in place for writing reports for Council, although this appears to be aimed only at committee secretaries rather than more widely. Such guidance helps to ensure that reports are in a consistent format and thus easier to read, as well as making it clear what Council expects to receive.

Recommendation:

Council should ask the University Secretary to develop the guidelines for writing reports so that they apply to anyone submitting a paper for consideration by Council, and to ensure that these are complied with.

10.5   Follow up processes and publication of minutes

The minutes of Council meetings are reasonably detailed, although some interviewees commented on the fact that they do not generally reflect the discussion at the meeting, particularly where points of challenge have been raised. Some of those we interviewed who sat on sub-committees made the observation that it would be helpful if the minutes of meetings of sub-committees recorded more of the discussion and debate so that Council as a whole had a better understanding of the nuance and context that underpinned the relevant committee's recommendations. We have seen more detailed minutes

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[15] Regulatory Framework, paragraph 446
[16] CUC Higher Education Code of Governance (consultation draft), paragraph 5.1

work well elsewhere, and recording more of the discussion can help in ensuring decision-making is more transparent.

Each Council agenda includes a standing item for 'matters arising' from the minutes of the previous meeting. We understand that this is used for those matters which it is considered need to come back to Council, rather than a follow up of agreed actions more generally. There is no formal process of follow up to provide reassurance to Council that all decisions taken at meetings are being dealt with appropriately.

Minutes of Council meetings are published on the University website (except for closed items), together with some of the papers considered by Council. The decision about which documents to publish is part of the agenda of each Council meeting, which is good practice. Other than the minutes of the Senior Remuneration Committee, minutes of Council committees are not published.

We understand that the University is in the process of implementing a new Information Classification and Handling Scheme which broadly aligns with current ISO standards. Information will be classified as one of four categories, with rules on handling which apply accordingly. It is proposed that as part of the pilot the papers going to Council, Senate, UEB and their sub-groups wlll be classified in accordance with the Scheme.

Guidance published by the Information Commissioner's Office (ICO) on the types of information that it expects universities to publish in order to meet their commitments under the model publication scheme includes: "*agendas, officers' reports, background papers and minutes from governing body, Council/Senate, academic board, steering groups and committees.*"[17]

The requirements of publication invariably raise concerns about the extent to which confidential information relating to financial matters, student numbers or ongoing disputes should be included in published minutes. The key question to ask is whether the public interest (confidence in the governance of the University) favours publication, or whether that is outweighed by the University's commercial interests. Whilst it is standard for universities to classify some agenda items as confidential, there should be a presumption of openness and an expectation that a classification of confidentiality will be relatively rare. That classification should be reviewed on a regular basis to determine whether the reason for redacting or withholding information still persists; if not, the minutes should be published. In this context we note that the University has quite a lot of "closed items" and these should be reviewed on an ongoing basis to see if the reasons for confidentiality still prevail.

Recommendations:

Council should introduce a more formal process to record and monitor actions agreed at meetings. This could comprise anything from a simple note in the margin of Council/committee minutes, or a table of agreed actions at the end of the minutes, to a more formal action log/tracker which records the agreed action, who is to take it and the deadline, and which is then RAG rated and monitored.

Council should ensure that all minutes (including those of Council committees) are published unless there are good reasons for classifying them as confidential. The new Information Classification and Handling Scheme should assist with the process of identifying confidential material.

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[17] ICO Definition document for universities and other higher education institutions, page 5

11.   **OPTIONAL DEEP DIVE**

As part of the ongoing Council effectiveness review, the Review Group considered the issue of the optional 'deep dive' into a particular aspect of Council's operation. A number of possible areas of enquiry were discussed, some because they were raised by interviewees as part of the review process and others which were suggested by members of the Review Group.

These have included:

- The role and distinction between Executive and Council sub-committees
- Student Lifecycle Project
- Ensuring sufficient assurance for Council in relation to HR matters
- The role of Council sub-groups in overseeing major projects

Whilst members of the Review Group have been generally supportive of commissioning a deep dive, no consensus has yet emerged as to what it should look at.

As there is no obvious area of Council's operation requiring a deep dive to be carried out at this stage, we recommend that this is considered further in due course, perhaps in six months' time when the actions from the effectiveness review are being reviewed. We would be happy to discuss this further with the Review Group as required.

APPENDIX (1)

Recommendations

We recommend that Council reviews its response to our recommendations against the final version of the CUC Code once published. We are happy to support this process as necessary (see footnote 3).

Regulatory framework & wider statutory/legal responsibilities
1. Council should consider further development and training for members on the Regulatory Framework, in particular how it links with their wider duties as governors and trustees, for example in relation to the University strategy.
2. Council should consider on an ongoing basis whether the balance between the time spent on regulatory matters and that on its strategic role remains appropriate.

Strategy
3. Council should (working with UEB) develop appropriate performance indicators for the new strategy and record what information it needs to be able to monitor and evaluate performance against the strategic plan.
4. If there is a general consensus that there needs to be more time for discussion or debate around key issues, Council should consider how these might be accommodated within Council's established ways of working.
5. Council should review its skills matrix and ensure that all the skills needed to oversee the successful delivery of the University's strategy are represented around the table. If necessary its succession planning needs to be re-profiled to prioritise any key skills gaps.

Resilience and adaptability
6. Council should reflect on the changes to its practices necessitated by COVID-19 and determine which, if any, it wishes to continue or adapt on a longer term basis. In particular, Council should consider the format of and frequency of its meetings.
7. Council should reflect on the role of its committees and review the current Scheme of Delegation, to ensure that these are optimal for the way it wishes to work in the future.

Academic governance
8. Council should consider how to build a broader relationship with Senate and adopt appropriate measures. This should include clarification of and a greater role for the Senate nominees on Council.

Student voice
9. Council should satisfy itself that the current measures for student engagement enable it to hear about the needs and priorities of all student groups.

Membership and proceedings of Council
10. Council should continue to take active steps to diversify its membership and should ensure focussed and determined action is taken to discharge the CUC Code primary element.
11. Council should consider whether any of the measures described above might be of assistance, in particular ensuring that its expenses policy facilitates the reimbursement of as wide a wide range of expenses as the Charity Commission permits.
12. Council should consider how it can facilitate greater opportunities for members to discuss issues and provide constructive challenge.

13. Council should introduce appropriately detailed, written standing orders to govern the conduct of its meetings, and those of its committees.
14. Council should ask the University Secretary to develop the guidelines for writing reports so that they apply to anyone submitting a paper for consideration by Council, and to ensure that these are complied with.
15. Council should introduce a more formal process to record and monitor actions agreed at meetings. This could comprise anything from a simple note in the margin of Council/committee minutes, or a table of agreed actions at the end of the minutes, to a more formal action log/tracker which records the agreed action, who is to take it and the deadline, and which is then RAG rated and monitored.
16. Council should ensure that all minutes (including those of Council committees) are published unless there are good reasons for classifying them as confidential. The new Information Classification and Handling Scheme should assist with the process of identifying confidential material.

APPENDIX (2)

Documents reviewed

Charter, Statutes and Regulations
Our University Our Plan Our Future - Strategic Plan 2016-21
Annual Report and Financial Statements 2018-19
Council Register of Interests 2019-20
Council Membership Framework 2017-18
Roles and responsibilities of Council members
Induction information for Council members
Council effectiveness questionnaire 2018-19 (template)
Committee structure 2019-20
Terms of Reference for Audit committee, Equality, Diversity and Inclusion committee, Estates committee, Finance committee, Nominations committee, Senior Remuneration committee
Agendas for Council meetings October 2019 - July 2020
Minutes of Council meetings October 2017 - June 2020
Council Business Plan 2019-20
Summary document - Minutes of Council, Council committees and Senate engagement with the regulatory framework (including the OfS Compliance Register)
Paper for Council January 2018 Preparation for registration with the OfS
Paper for Council April 2018 Preparation for registration with the OfS
Paper for Council July 2018 Update on OfS registration application
Paper for Council October 2018 Registration with the OfS, including letter from the OfS July 2018
OfS application documents
Student Protection Plan and Student Protection Plan (City College, International Faculty)
2019-20 Access and Participation Statement
2019-20 Access and Participation Resource Plan
2019-20 Access and Participation Plan; and version post OfS feedback
Self-assessment on management and governance
Self-assessment on consumer law (Annex C)
Paper for Council July 2019 OfS compliance register and annual returns
PWC Internal Audit Report 2019/20 Regulatory Compliance Review
Paper for Council April 2020 OfS requirements during C-19 pandemic
Paper for Council April 2020 OfS Compliance Register
Full pack of papers for Senate meeting June 2020
Full pack of papers for Council meeting July 2020, excluding reading room
Minutes of Council meetings 2017-18 plus some of background documents (Senate effectiveness review, report of Senate, Audit Committee annual report, report on academic standards and quality, functions of Council)
Minutes of Council meetings 2018-19 plus some of background documents (Audit committee annual report, report of Senate, report on Council/Senate committees, composition of Senate, OfS transparency information)
Minutes of Council meetings 2019-20 plus some of background documents (papers on effectiveness review x 2, Senate's annual academic assurance report, report of Senate, Audit committee annual report, succession planning, University vision green paper)
Paper for Council October 2016 Council effectiveness review
Paper for Council February 2017 Council effectiveness review, update and action plan
Paper for Council October 2017 Council effectiveness review, report on progress against action plan; key recommendations and related sub-recommendations: response and action plan
Information for secretaries and administrators of committees of Council and Senate 2019-20
Template Executive Summary for business of Council cover sheet
Paper for Council July 2019 on amendments to Regulations, plus appendices
Report of Council and Senate Task and Finish Group April 2018
Paper for Council June 2020 on Member and Vice-President pairings
Council skills matrix June 2020
Template forms: register of interests and fit and proper declaration
Council pre-meeting information sessions and dinner speakers 2015-16 to 2019-20
Guidelines for elections to Senate
General information on University website about management and governance

Summary of responses to Senate questionnaire

Total responses: 20

		Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Unable to comment/don't know
1	I understand the respective roles of Council and Senate in the governance of the University	8	8	3	1		
2	From my perspective I believe that Council understands its role in academic governance	1	16	1			2
3	Council and Senate work effectively in relation to academic governance	2	11	5	1		1
4	The Senate Academic Assurance Committee helps Senate to discharge its role in academic governance	2	17				1
5	The Annual Academic Assurance Report from the Senate contains all the information Council needs to discharge its role in academic governance.	3	8	5	2		2
6	There is an effective way for Council to provide feedback to Senate on matters relating to the assurance of academic governance.	2	7	5	3	1	2
7	Based on my experience, knowledge and/or understanding, I am confident that Council receives and is able to test assurance that academic governance at the University is effective.	2	11	3	3		1
8	Any other comments on Council's oversight role in relation to academic governance at the University?						

a	Note on 5: The academic year 2018/19 was Senate Academic Assurance Committee (SAAC)'s first year of operation, I understand. It concentrated on 3 topics only, which were • Role of External Examiners • Grade Inflation • Professional Accreditation A point I hope will be covered in the future relates to criteria and procedures underlying professorial promotion and criteria and procedures for appointment of PVC & director positions within Faculties.
b	I am not clear what question 3 means. Is it asking two separate questions about whether Council on the one hand, or Senate on the other, work effectively, or is the question about whether the two bodies work effectively together? I have the impression that, until the recent establishment of the Senate Academic Assurance Committee, there has been rather little input to Council from Senate on Academic matters. However, since members of Senate do not see Council papers (perfectly reasonably), this is hard to know for sure. The OFS and CUC guidelines referred to above focus on whether the Council is satisfied, so I think it is actually hard for members of the Senate to comment. I presume you are asking members of Council the same questions.
c	The annual academic assurance report has only been approved by Senate in its present form once in Autumn 2019 and is going to change again so it so it isn't very annual.
d	A more effective manner of communication between the two, rather than just reports, such as perhaps Senate presenting to Council, to allow questioning, would be beneficial – and any feedback from Council to be explained by representative of Council – to ensure clarity of message.
e	Question 5 above is potentially misleading, I think. The Annual Assurance Report should be seen in combination with Council's work more generally and, in particular, the reports and updates that are routinely made to Council by the institution. The SAAC report is the opportunity that Senate has to report to Council on the work it undertakes in terms of academic assurance through the year.
f	The addition of an Academic Assurance Committee to the governance structure seems to be a step in the right direction. However, it can only review the work of other groups in the University in a rather modest way. It will be several years before that group can cover sufficient topics, in sufficient detail, to provide Council with a full overview of all issues relating to academic governance.
g	Sometimes, it seems that Senate is just approving things already decided by the Council and the UEB, limiting significantly Senate's power.
h	Senate's effectiveness in providing academic assurance to Council has improved. However, in order for Council to be able to adequately test assurance that academic governance is adequate and effective, further improvement is required both in the type of information provided to Council by Senate and in the effectiveness of the interaction between Senate and Council.
i	I am not sure that many Senate members would fully understand Council's oversight role and how this functions as their focus is usually on trying to understand how Senate functions. They are of course aware that Council has an oversight role, approves things and is involved in ratifying and taking major

		decisions. But they would know far less about the processes through which this is operationalised. The key question, of course, is what they need to know, particularly given our current capacity challenges.
	j	Is there a feedback mechanism between Council and Senate to improve working relationship?