**THE COUNCIL**

Governance Review Group

This paper presents the findings and recommendations of the Governance Review Group.

The recommendations in the report have implications for the University's Statutes and the Council's Standing Orders. Proposals for changes will be presented to the July 2005 meeting of the Council.

The Council is asked **to approve** the recommendations of the group set out in Section 2 of the attached report.

Fraser Woodburn
University Secretary
May 2005

# THE GOVERNANCE REVIEW GROUP
# OF THE COUNCIL

# GOVERNANCE REVIEW REPORT

# MAY 2005

**Contents:**

# 1    EXECUTIVE SUMMARY

1.1    This paper presents the findings and recommendations of the Governance Review Group drawn up over the period September 2004-April 2005.  The Group was set up in July 2004 to "review the effectiveness and performance of the Council and its committees against the guidance and recommendations of the Combined Code of Governance, the Lambert Review and any other specific guidance which might be issued by the Higher Education Funding Council for England (HEFCE) or the Committee of University Chairmen (CUC)".

1.2    The Review Group considered material appropriate to good practice in governance in the higher education sector and analysed comments made by members of the Council and the University community.

1.3    The Group also considered the report and recommendations of the Academic Governance Review Group, which were submitted to the March 2005 meeting of the Senate, so as to ensure consistency of the two governance reviews.  Most of the recommendations of the Academic Governance Review were accepted by the Senate but some issues remain to be considered by the June 2005 meeting of the Senate.  The outcomes of the Academic Governance Review will be considered by the Council at its July 2005 meeting.

1.4    The Review Group recommends a reduction in the size of Council from 34 to 25.  It proposes the adoption of a statement of the role of the Council and committee members and, introduces the expectation that all new external members attend an initial induction visit and be linked to areas of the University for a period of time.  These changes will increase the demands on the time of Council members, particularly external members.

1.5    A statement of primary responsibilities of the Council is proposed, in accordance with the CUC Code of Practice.  In the interests of good governance and to ensure that the Council concentrates its energies on fulfilling it primary responsibilities, the Review Group recommends that the Council formalises the delegation of some of its powers.  A recommended statement of delegation is appended to the report.

1.6    Recommendations are also made on the role of the Membership Committee in proposing candidates for membership of the Council.  The Senate and staff members should provide statements to the constituency appointing them of the contribution that they would expect to make to the Council.

1.7    The Review Group discussed the effectiveness of the Council.  It makes recommendations on the annual effectiveness review of the Council and its committees and on the arrangements for meetings of the Council.

1.8    The Review Group found the current structure of the committees of the Council to be working well.  It makes one recommendation to change the terms of reference of the Finance Committee.

1.9    The recommendations in the report have implications for the University's Statutes and the Council's current Standing Orders.  In particular, statute changes will be required for the revised composition of the Council and the delegation of the Council's powers.  Proposals for changes to both will be presented to the July 2005 meeting of the Council.

1.10    Under the proposed timetable for implementation it is expected that the revised Council structure will come into effect from 1 August 2006.

## 2    LIST OF RECOMMENDATIONS

**Recommendation 1**
The Council should be reduced in size to 25 with membership set out in paragraph 6.6 to be effective from 1 August 2006, with provision for members of the executive and other University officers to be in attendance as necessary.

**Recommendation 2**
The requirement that at least one member of the Council should be a graduate of the University should be removed from the Statutes, to be replaced by an addition to the criteria for Council membership of 'student experience of the University'.

**Recommendation 3**
The Council should appoint an external member with special responsibility for each of Northern Ireland, Wales and Scotland.  The Membership Committee should recommend members to the Council to undertake these roles.

**Recommendation 4**
The Council should adopt Appendix 4 as the statement of role of all Council members and members of committees and that statement should be included in all appointment letters.

**Recommendation 5**
All new external members should attend an initial induction visit.

**Recommendation 6**
External members of the Council should be linked to one or more units of the University for periods of two years and be encouraged to engage with key issues for the University.  The Membership Committee should propose the assignments of members to University units.

**Recommendation 7**
The practice that external members are not remunerated should continue.

**Recommendation 8**
The Council should adopt the statement of primary responsibilities in Appendix 5.  This should be included in the Standing Orders of the Council, and the Freedom of Information and internal governance websites.

**Recommendation 9**
The Council should approve the statement of delegation in Appendix 6.  This should be included in the Standing Orders of the Council and the Freedom of Information and internal governance websites.

**Recommendation 10**
The Membership Committee should consider candidates for membership of the Council against the role description and statement of responsibilities in Appendices 4 and 5, and in addition to inviting names from outside

organisations and members of the University, should also consider advertising the opportunity to become a member of the Council in the press.

**Recommendation 11**
For the Senate and staff members of the Council (other than ex officio members) the appointing body should receive the role description and statements of responsibilities together with a statement by the candidate of the contribution he or she would expect to make to the Council.

**Recommendation 12**
The Pro-Chancellor and the Vice-Chancellor should be members of the following committees of the Council:

Pro-Chancellor:     Chair of Remuneration Committee
                    Chair of Membership Committee
                    Member of Finance Committee
                    Member of Strategic Planning & Resources Committee

Vice-Chancellor:     Chair of Strategic Planning & Resources Committee
                    Member of Membership Committee
                    Member of Finance Committee
                    Member of Remuneration Committee
                    In attendance at Audit Committee

**Recommendation 13**
The questionnaire about effectiveness should be completed by Council members annually (to precede the meeting with the Pro-Chancellor).

**Recommendation 14**
Each of the Council committees should produce an annual report outlining the business conducted by the committee in the preceding year against its terms of reference.

**Recommendation 15**
Council meetings:
- The current quorum for the Council (10 members of whom 3 are external members) should be changed to a quorum of 40%, in line with the quorum suggested in the Academic Governance Review for the new Senate, with discretion being left to the chair to determine whether a meeting is representative of the total membership even though the quorum may have been met;

- More time should be available for Council meetings to provide time for discussion.  Council meetings should start at 10.00am;

- The papers submitted to Council meetings should be received in a timely way, be short, clear and concise with executive summaries. They should conform to University standards for document preparation;

- Communication by the Council to the University community and stakeholders, should be strengthened by placing unconfirmed minutes and papers on the intranet, and unconfirmed minutes on the internet following the meeting.

**Recommendation 16**

No changes be made to the number of committees.  The terms of reference of the Finance Committee should be amended to restore to the Council the authority to create related undertakings, to comply with the University's Financial Regulations.


## 3      INTRODUCTION

3.1      At its March 2004 meeting, the Audit Committee considered an analysis of the University's governance against the Combined Code of Governance and the Lambert Review.  As a result, it recommended a three pronged approach to reviewing the effectiveness and performance of the Council and its committees:

(a)      An annual check by the Council and its committees through appraising business and decision making against terms of reference.  In addition a questionnaire would be issued to each retiring member of Council (whether at the end of the normal term of office or not) seeking views on effectiveness.  These would be submitted to Membership Committee and any areas of significant concern followed up.   The annual check would take place before July each year so that any changes to constitution or terms of reference could be forwarded to the July Council meeting for approval to become operational at the start of the new committee cycle;

(b)      Annually the Chair of the Council should meet separately with three groups of Council: the external membership of the Council, the executive of the University, those members of the University who were non-executive staff and student members;

(c)      A review of governance should be conducted every five years by an appropriately constituted review group, working on behalf of the Council and reporting its findings to the Council.  The suggestion in the Lambert Review of a major review every two or three years would be over-elaborate; any risk factor would be offset through the annual check procedure.

3.2      In May 2004, the Council agreed the proposals of the Audit Committee.  In July 2004 the Council approved appointments to the Group to conduct the quinquennial review.  Appendix 1 to this report provides the terms of reference, membership, scope and methodology for the review.

3.3      The Review Group began its work in September 2004, with a timescale which would bring its final report no later than the July 2005 Council meeting.

3.4      The Review Group has undertaken its work by the analysis of material appropriate to good practice in governance in the higher education sector and analyses of comments made by members of the Council and the University community.  From discussion, the Group has identified key issues which are set out together with recommendations within the body of the report. (sections 5–12).

4    INFORMATION CONSIDERED BY THE GOVERNANCE REVIEW GROUP

The following is not exclusive, but lists the main documents which were considered by the Review Group.

- An analysis of the questionnaires returned by members of the Council.
- The feedback from the 3 meetings of Council members with the Pro-Chancellor in September 2004
- An analysis of comments and information returned by the University community.
- Input from an approach made by the Chair of the Review Group to the chairs of Council committees.
- The Charter and Statutes.
- The powers and functions of the Council, its Standing Orders and the constitutions of its committees.
- The Guide for Members of HE Governing Bodies the UK, November 2004 (circulated to Council members)
- The CHEMS final report to the CUC on good practice in 6 areas of governance of HE Institutions (including information on innovative good practice).
- The Combined Code on Corporate Governance.
- A comparison of the Lambert Review with the governance of The Open University.
- A progress report on the Academic Governance Review of The Open University

5    ACADEMIC GOVERNANCE REVIEW

5.1    In parallel with the review of Council governance, there has been a review, led by the University Secretary, of academic governance.  The review has examined the Senate, the Academic Board, the sub-structure of the Academic Board and the Boards of Central Academic Units.  The report and recommendations of the Academic Governance Review were considered by the Senate at its March 2005 meeting.  Most of the recommendations were accepted by the Senate.  In particular, the Senate has agreed that the present very large Senate of around 1250 members, and its Academic Board, should be replaced by a new Senate of no more that 150 members.  Some recommendations have been referred back, particularly the precise composition of the new Senate.  That, and other issues arising from the Academic Governance Review, will be considered by Senate in June 2005 and a report will be considered by the Council in July 2005.

5.2    The Council Review Group considered the report and recommendations of the Academic Governance Review to ensure consistency between the two reviews.

6    SIZE OF THE COUNCIL

6.1    A key issue in the review has been the balance to be struck between ensuring stakeholder involvement in the Council and the greater effectiveness of smaller bodies in making decisions. The good practice section of the CUC guide contains the following statements:-

*"Every higher education institution should be headed by an effective governing body, which is unambiguously and collectively responsible for overseeing the institution's activities, determining its future direction and fostering an environment in which the institutional mission is achieved and the potential of all learners maximised."[1]*

*"There should be a balance of skills and experience among members sufficient to enable the governing body to meet its primary responsibilities and to ensure stakeholder confidence. A governing body of no more than 25 members represents a benchmark of good practice."[2]*

The Lambert report states:

"Very few pre-1992 universities have managed to meet Dearing's recommendation that governing bodies should have a maximum of 25 members, despite widespread agreement that larger bodies are less effective. The lack of constructive debate and low level of individual accountability in large councils is frustrating for both management and members, and attendance at each meeting is rarely above 70 to 80 per cent. Effectiveness requires high levels of engagement and individual responsibility and accountability, which is difficult to achieve with too many individuals in one room" [3]

6.2     The University is expected to comply with this guidance on size or explain why it should not. At present, the Council has 34 members. In the previous quinquennial review (1998-2000) the Council was reduced in size from 45 to 35 (now 34 following the reduction in number of Pro-Vice-Chancellors from five to four).

6.3     The argument for reducing the size of the Council is greater effectiveness. A smaller Council would more easily develop a sense of cohesiveness and corporate responsibility. Individual members would be more able to contribute in debates and would more readily gain an understanding of the views of other Council members. It would be easier to engage members in the affairs of the University, particularly through greater involvement in the committees of the Council. However, it also places a greater burden of responsibility on members, particularly the external members who have other calls on their time in their working lives. It will be necessary for every external member to be involved in at least one of the committees and there will be higher expectations of attendance at meetings.

6.4     The argument against a smaller Council is that the Open University has a greater diversity of stakeholder interest than would be the case for other universities. We operate in each of the four countries which comprise the United Kingdom as well as internationally. The University is accountable to the Scottish as well as the English Higher Education Funding Council and, in all likelihood, will shortly be funded by the Welsh Higher Education Funding Council. The University's approach to delivering supported open learning means that it has a greater variety of categories of staff who are involved in the development and delivery of programmes of study than in other universities.

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[1] From the CUC Code of Practice – The Role of the Governing Body
[2] From the CUC Code of Practice – Structures and Process
[3] From the Lambert Review, December 2003 (section 7)

6.5 There is therefore a balance to be struck between effectiveness and diversity of membership. Having considered models of Council membership, the Review Group believes that it is possible to accommodate the necessary range of experience in a body of 25. Among the external members it will be necessary to ensure an appropriate mix of gender, ethnicity, age, geographical base and expertise; the current criteria for lay members are appended. (Appendix 2) It is, in particular, necessary to ensure expertise for the committees of Council which require specialist experience – Finance, Estates, Audit, and Staff Strategy.

6.6 The University has an academic governing body which has a defined responsibility for the direction of teaching and research; representation from the Senate is essential. The executive, staff and students also need to be included. The Review Group believes that the following model contains the appropriate balance of Council membership. The current composition of Council is contained in Appendix 3.

Proposed composition of the Council.

| | |
|---|---|
| External members [1] | 14 |
| Vice-Chancellor | 1 |
| Senate members | 5 |
| Associate lecturer members | 2 |
| Staff member [2] | 1 |
| Student members [3] | 2 |
| | 25 |

[1] includes the Pro-Chancellor and Treasurer
[2] covers academic related and support staff
[3] includes the President of the Open University Students Association ex officio

6.7 The remainder of the executive; namely the Pro-Vice-Chancellors, the University Secretary, the Finance Director and the Director, Students would normally be in attendance at meetings of the Council. Other officers of the University would attend as appropriate.

6.8 The Statutes stipulate at present that at least one of the external members of Council has to be a graduate of the University. The University disseminates learning in a variety of ways including: programmes of study leading to degrees, diplomas and certificates; broadcasts; short courses; books; DVDs; websites and other course materials. Many members of the public will have experience of the University but not necessarily through becoming graduates. The University would benefit from having, as external members, people who have had such experience. The Review Group does not think that this is best achieved by maintaining a separate category of graduate lay member. Rather a criteria 'student experience of the University' should be added to those already drawn up in Appendix 2.

6.9 The University, although based in England operates in each of the four countries of the United Kingdom. Each has a distinct education system and distinct arrangement for the funding of higher education. The University is funded by two funding councils now and is likely to receive funding from a third with the transfer of responsibility to the Higher Education Funding

Council for Wales.  It is important that the interests of each of the jurisdictions of the United Kingdom are borne in mind in Council discussions.

**Recommendation 1**

6.10    The Council should be reduced in size to 25 with membership as set out in paragraph 6.6 to be effective from 1 August 2006, with provision for members of the executive and other University officers to be in attendance as necessary.

**Recommendation 2**

6.11    The requirement that at least one member of the Council should be a graduate of the University should be removed from the Statutes, to be replaced by an addition to the criteria for Council membership of 'student experience of the University'.

**Recommendation 3**

6.12    The Council should appoint an external member with special responsibility for each of Northern Ireland, Wales and Scotland.   The Membership Committee should recommend members to the Council to undertake these roles.


**7       ROLE OF COUNCIL MEMBERS**

7.1     The CUC guide contains helpful statements on the role of Council members. The Review Group has adapted the guide to produce a proposed Open University statement of role which is contained in Appendix 4.  This is intended to be incorporated into the letter of appointment to new members of the Council and its committees.

7.2     Council members and co-opted members of the Council committees are given opportunities for development in their role including induction visits and opportunities to participate in the CUC governor development programme. The Review Group suggests that this be strengthened in two ways.  First, new external members should be expected to undertake an induction visit and that this should be made clear when issuing the invitation to join the Council. Second, external members should be linked to one or more units of the University.  They would be encouraged to attend appropriate events, briefings and visits.  To broaden expertise and avoid over-commitment to a particular area, each link would be for a maximum of two years.  External members would also be encouraged to engage at an early stage with key issues for the University, to build up their knowledge over a wider area than their own experience and expertise.

7.3     The Review Group did consider remuneration of external Council members. This is almost unknown in the sector at the moment.  There was no encouragement to introduce payments at the conference to launch the CUC guide (November 2004).  The Group does not believe that payment would be a significant incentive to the kind of member we would wish to attract and it would change the relationship with the University, not necessarily in helpful ways.  The Group does not wish to recommend a change for the time being although that might have to be reconsidered should the practice become widespread in the sector.

**Recommendation 4**

7.4    The Council should adopt Appendix 4 as the statement of role of Council and members of committees and that statement should be included in all appointment letters.

**Recommendation 5**

7.5    All new external members should attend an initial induction visit.

**Recommendation 6**

7.6    External members of the Council should be linked to one or more units of the University for periods of two years and be encouraged to engage with key issues for the University. The Membership Committee should propose the assignments of members to University units.

**Recommendation 7**

6.7    The practice that external members are not remunerated should continue.


**8    STATEMENT OF PRIMARY RESPONSIBILITIES**

8.1    The CUC Code of Practice recommends a statement of primary responsibilities of the Council which should be published on the internet and in the annual report together with identification of key individuals (already on the Freedom of Information site) and a broad summary of the responsibilities delegated to management. The Review Group has drawn up the statement of responsibilities in Appendix 5. This statement assumes that the Council agrees to delegate some of its responsibilities, as recommended in paragraph 9.3 below.

8.2    The Council has a special relationship with the academic governing body, the Senate. The Senate is the custodian of academic standards in teaching and research and sets academic policy. It is important that the Council respects the powers and authority of the Senate. The Council receives a report on activities at the preceding meeting of the Senate including recommendations for the approval of the Council. The Senate also receives a report on the activities at the preceding meeting of the Council.

8.3    The Senate is responsible for conducting reviews of its own effectiveness and of the effectiveness of the academic governance structure as a whole. It reviews academic performance and makes recommendations on areas for performance improvement to appropriate committees and officers.

8.4    The Strategic Planning and Resources Committee is a bridge between the Senate and the Council, taking advice from the Senate before recommending strategy and priorities to the Council, and advising the Senate of the financial and planning assumptions that should influence academic plans and priorities. In the current structure, this role is mediated via the Academic Board. At its meeting on 9 March 2005 the Senate agreed a simplified structure. In future SPRC will deal directly with the new Academic Governing Body (a revised Senate).

8.5 In 1996 the University established an Equal Opportunities Committee. The committee's remit is split between staff policy (a Council responsibility) and academic policy matters. The continuing existence of a separate Equal Opportunities Committee, acting in an advisory capacity has been considered by the Academic Governance Review. The Group considered that there was sufficient responsibility vested in office-holders, Senate committees and informal groups to ensure a pan-University approach to the promotion of equality and diversity and to compliance with legislation and good practice without the need for a governance body deriving authority from the Senate and the Council. At its meeting on 9 March 2005 the Senate agreed a recommendation (for recommendation to the Council) that, subject to co-ordination with the Council review, the Equal Opportunities Committee be replaced by informal groups advisory to the relevant formal governance bodies, and to office holders. These informal groups will cover co-ordination, awareness raising and monitoring of compliance.

8.6 The Review Group acknowledges the rationale for the proposal to disband the formal joint Senate/Council committee. It recognises that equal opportunity issues are fundamental to the University and agrees that these are best monitored by informal bodies not by a formal governance group.

**Recommendation 8**

8.7 The Council should adopt the statement of primary responsibilities in Appendix 5. This should be included in the Standing Orders of the Council and the Freedom of Information and internal governance websites.


9 **DELEGATION**

9.1 The CUC general principles of governance state:

"Delegation
*Where permissible, the governing body may delegate authority or allocate some of its work to committees, grant delegated authority to the chair or a committee to act on its behalf, and delegate responsibility to the executive head and officers of the institution. Such delegations must be clearly defined in writing and be formally approved by the governing body. Having delegated authority to other bodies or individuals to act on its behalf, the governing body is nevertheless still ultimately accountable and has to accept corporate responsibility for the actions taken.*"

9.2 The University's Charter states in paragraph 16 that "There shall be constituted…. such other bodies as the Council and Senate may from time to time consider necessary for the administration of teaching and research and other work and activities of the University". Currently the Statutes do not provide for the Council to delegate any of its powers other than to the Finance Committee, whose constitution and delegated powers are determined by the Council. In practice other Council powers have been delegated to the management, the Senate and to committees. In the interests of good governance and to ensure that the Council concentrates its energies on fulfilling its primary responsibilities, it would be appropriate for the Council to formalise the delegation of some of its powers. A statement of delegation is attached as Appendix 6. This defines responsibilities to be retained by the Council, those already delegated and lists recommendations on the

delegation of powers. A change in Statutes will be required to ensure that delegation by the Council is not open to challenge.

**Recommendation 9**

9.3     The Council should approve the statement of delegation in Appendix 6. This should be included in the Standing Orders of the Council and the Freedom of Information and internal governance websites.


**10      APPOINTMENT OF MEMBERS**

10.1    The Membership Committee has sought nominations for external members from a range of outside organisations and has invited, through various routes, members of the University to suggest names. The more explicit role description and statement of responsibilities of the Council may be helpful in explaining what is expected of external members. The CUC guide also suggests the advertising of posts.

10.2    The staff and Senate members (other than ex officio members) of the Council are appointed or elected by constituencies. The role description and statement of responsibilities would also be helpful in explaining the role to these constituencies. It is suggested that these documents should be made available to the appointing bodies together with a statement of the contribution that the candidate would expect to make to the Council.

10.3    The Pro-Chancellor and the Vice-Chancellor are currently listed as ex-officio members of all Council committees. This is not a statutory obligation. The Group proposes that these senior University officers should be members of or attend relevant committees only.

**Recommendation 10**

10.4    The Membership Committee should consider candidates for membership of the Council against the role description and statement of responsibilities in Appendices 4 and 5 and, in addition to inviting names from outside organisations and members of the University, should also consider advertising the opportunity to become a member of the Council in the press.

**Recommendation 11**

10.5    For the Senate and staff members of the Council (other than ex officio members) the appointing body should receive the role description and statement of responsibilities together with a statement by the candidate of the contribution he or she would expect to make to the Council.

**Recommendation 12**

10.6    The Pro-Chancellor and the Vice-Chancellor should be members of the following committees of the Council:

Pro-Chancellor:    Chair of Remuneration Committee
                   Chair of Membership Committee
                   Member of Finance Committee
                   Member of Strategic Planning and Resources Committee

Vice-Chancellor:   Chair of Strategic Planning and Resources Committee
                          Member of Membership Committee
                          Member of Remuneration Committee
                          Member of Finance Committee
                          In attendance at Audit Committee


## 11    EFFECTIVENESS

11.1    The Council currently reviews effectiveness by these means:

Annual reviews of effectiveness against the terms of references for Council and its committees
Questionnaire to Council members (new for 2004)
Annual meeting of the various groups of Council members with the Pro-Chancellor (new for 2004)
Periodic reports on performance against strategic objectives and key performance indicators (KPIs).
Annual report from the Audit Committee.
Annual report of the Chief Auditor
Annual report of the Nominated Officer for related companies

11.2    The Group considers that the questionnaire is a useful tool for assessing views on effectiveness.  The questionnaire on governance which was circulated to all Council members in September 2004 evoked a smaller response than anticipated.  10 of the 19 external members of the Council returned information and the overall response was 52%.

11.3    The Group considered the effectiveness of Council meetings and administration.

*"The governing body should normally meet not less than four times a year.  The agenda and supporting papers should be circulated in advance and the decisions minuted.  Members should attend all meetings where possible, and the governing body should establish clearly the number, and if necessary the category, of members who constitute a quorum"[4]*

11.4    There is, however, a case for more work to be undertaken on measuring effectiveness.  The Review Group has recommendations for strengthening these arrangements.

11.5    The Review Group considered the effectiveness of the Council meetings.  The current quorum for the Council (34 members) is ten members, of whom three should be external members.  This is 30% of the membership.  A minimum level of attendance at meetings of the Council is needed to legitimise decision-making.  The Review Group believes that 40% of the membership should be set as the quorum for attendance at Council meetings, with discretion being left to the Chair to determine whether a meeting is representative of the total membership, even though the quorum may have been met.

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[4] CUC general principals of Governance – procedural matters

11.6 Currently meetings of the Council start at 11.00am. The Review Group feels that meetings should start earlier, to allow more time for discussion. A 10.00am start is suggested. The papers that are presented to the Council are important. They need to be circulated sufficiently far in advance of Council meetings to allow time for members to read them and absorb the issues. In order to achieve this purpose, papers should be clear, short and concise with executive summaries. They should conform to University standards for document preparation.

11.7 As the governing body of the University, the Council should be visible to the University community and its decisions should be accessible. Communication between the Council and the University community and stakeholders should be strengthened by placing unconfirmed minutes and papers on the intranet, and unconfirmed minutes on the internet following the meeting.

**Recommendation 13**

11.8 The questionnaire about effectiveness should be completed by Council members on an annual basis (to precede the meeting with the Pro-Chancellor).

**Recommendation 14**

11.9 Each of the Council committees should produce a short annual report outlining the business conducted by the committee in the preceding year against its terms of reference.

**Recommendation 15**

11.10 Council meetings

- The current quorum for the Council (10 members of whom 3 are external members) should be changed to a quorum of 40%, in line with the quorum suggested by the Academic Governance Review for the new Senate, with discretion being left to the chair to determine whether a meeting is representative of the total membership, even though the quorum may have been met;

- More time should be available for Council meetings to provide time for discussion. Council meetings should start at 10.00am;

- The papers submitted to Council meetings should be received in a timely way, be short, clear and concise with executive summaries. They should conform to University standards for document preparation;

- Communication by the Council to the University community and stakeholders should be strengthened by placing unconfirmed minutes and papers on the intranet, and unconfirmed minutes on the internet following the meeting.

## 12    STRUCTURE OF COUNCIL COMMITTEES

12.1    The Review Group considered the current structure of the committees of the Council.  CUC guidelines set out key functions that should be undertaken by governing bodies.

12.2    Many of the powers of the Council are delegated to its committees.  The CUC guidelines set out good practice for governance in terms of delegation to its committees as follows:

*Delegation to Committees and Retention of Key Functions.*

*a)    it is common practice for the governing body to delegate some of its powers and to allocate some of its work to committees.  In deciding which tasks or responsibilities should be delegated to committees, the governing body should retain a formal schedule of matters reserved to it for its collective decision.  Such matters are likely to include final decisions on issues of corporate strategy, the review and approval of the institution's annual estimate of income and expenditure and audited financial statements; and the appointment and dismissal of the head of institution and of the secretary or clerk to the governing body;*

*b)    the articles of some institutions list key powers that the governing body may not delegate.  They also state that the governing body must establish committees on employment policy (without delegating to them the essential decision-making function in this area);*

*c)    all committees must be provided with a clear remit and written terms of reference, clearly stating the extent and limits of the committee's responsibilities and authority.  Committees must take care not to exceed their terms of reference and should be so advised by the secretary to the governing body.  Committees should distinguish between issues on which they are empowered to take decisions, and issues that they must refer to the governing body for decision.  Where a committee is acting under delegated powers it should submit regular written reports to the governing body on decisions that it has taken on the governing body's behalf.*

12.3    The following committees have been set up by the Council:

Audit Committee
Estates Committee
Finance Committee
Membership Committee
Remuneration Committee
Staff Strategy Committee
Strategic Planning and Resources Committee (jointly with Senate)

12.4    The schedule attached as Appendix 7 indicates the responsibilities of each of the committees as set out in the corporate governance statement in the annual financial accounts.

12.5    Having consulted widely, evidence suggested that the committee structure of the Council was working well.  The Review Group was satisfied that the number and range of the Council's committees are adequate to undertake the

work.  All committees of the Council have a balance of external and staff members.  They report annually to the Council on their work measured against their terms of reference.  The Group noted that the Staff Strategy Committee was undertaking a review of its constitution and would report to the Council in due course.  There will be a requirement for the Finance Committee to revise its terms of reference to restore to the Council the authority to create related undertakings, to comply with the University's Financial Regulations.

**Recommendation 16**

12.6    No changes be made to the number of committees.  The terms of reference of the Finance Committee should be amended to restore to the Council the authority to create related undertakings, to comply with the University's Financial Regulations.


**13      CHANGES TO THE STATUTES AND STANDING ORDERS**

The recommendations set out in this report have implications for the University's Statutes and the Council's current Standing Orders.  In particular Statute changes will be required for the revised composition of the Council (size and membership) and delegation of the Council's powers.  Proposals for changes to the Standing Orders (for implementation on 1 August 2006), will be presented to the July 2005 meeting of the Council.  Changes to the Statutes (for implementation on 1 August 2006) will be circulated as Special Resolutions which the Senate will be asked to comment on at its June 2005 meeting, and will be presented to the July 2005 meeting of the Council.


**14      TIMETABLE FOR IMPLEMENTATION**

The following schedule allows time to obtain consultation with the Senate, the agreement of the Council and the approval of the Privy Council to the Statute changes to be made by Special Resolution and implement all agreed changes for the 1st August 2006.

May 2005:          Report of the Governance Review Group submitted to the Council for approval.

June 2005:         Senate receives the review report and proposals for Special Resolutions.

July 2005:          The Council receives Special Resolutions for first vote.

September 2005:  The Council receives Special Resolutions for second vote.

September 2005:  Special Resolutions submitted for approval by the Privy Council.

December 2005:  Potential notification to the Council of the Privy Council's approval.

March–July 2006: The Membership Committee makes recommendations for appointments to the Council and its committees.

1<sup>st</sup> August 2006:   Changes to Statute and Standing Orders come into effect.

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Fraser Woodburn
University Secretary
May 2005

**GOVERNANCE REVIEW REPORT**

Terms of Reference, Membership, Scope and Methodology for the Governance Review Group

**1.  Terms of Reference**

The group will review the effectiveness and performance of the Council and its committees against the guidance and recommendation of the Combined Code of Governance, the Lambert Review and any other specific guidance which might be issued by the HEFCE or the CUC.

**2.  Membership**

| | |
|---|---|
| Chairman (lay Council member): | Mr Roger Dawe |
| 2 lay members of the Council: | Mrs Jane Barker<br>Mr Andrew Peck |
| 2 appointed members of the Council (University staff & students) of which one is a Senate appointed member. | Mrs Anne Bullman<br>Mr Peter Syme |

In attendance:

Mr AF Woodburn, Secretary
Ms JJ Duffield, Senior Assistant Secretary (Central Secretariat), Secretary to the Group
Mrs C Tereszczuk, Administrative Assistant (Central Secretariat)

**3.  Scope of the Review**

The task of the group has a single focus – the overall effectiveness of the Council as the governing body of the University but its work can be divided into three main elements:

a)   function, size, membership and operation of the Council;

b)   structure of the Council committees and their relationship to the Council;

c)   the powers of the Council *vis a vis* the Senate

**4.  Methodology**

The following processes are proposed for the conduct of the review:

- a questionnaire to all Council members (agreed by the group to be circulated)

- feedback from the Pro-Chancellor's meetings with three groups of Council members

- meetings with Chairs of Committees

- canvassing the wider University (Academic Board members)

- seeking the input of an external assessor.

**GOVERNANCE REVIEW REPORT**

**CURRENT CATEGORIES OF CRITERIA FOR COUNCIL MEMBERSHIP**
(agreed by the Council in March 2004)

1      Further/Higher Education/E-learning

2      IT/Computing

3      Personnel/Human Resources/Diversity

4      International context

5      Finance/Audit

6      Surveying/Estates

7      Commerce/Business/e-Commerce

8      Marketing/Media

9      Public/Community Service

10     Regional/National/Local government/Politics

11     TU's/Professional Associations

12     Science/Technology

13     Arts/Humanities

14     Health and Social Care

15     OU Related Experience

       **Other factors:**

16     Regional/National balance

17     Disability/experience of disability issues

18     OU Graduate (by study/exam)

19     Member of an ethnic minority


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**THE CURRENT COMPOSITION OF THE COUNCL**

**Chair**

1.The Pro-Chancellor                                           **1**

**Ex-officio members**

1.      The Pro-Chancellor (as above)

2.      The Vice-Chancellor                                  **1**

3.      The Treasurer                                        **1**

4.      The Pro-Vice-Chancellors (up to a maximum of five)   **4**

5       The President of the Open University Students' Association   **1**


**Appointed Members**

6.      Four members of the Senate, appointed by the Senate, including at least two of non-professorial status.          **4**

7.      One student elected by the National Conference of the Open University Students' Association.          **1**

8.      Two Associate Lecturers appointed by the Associate Lecturers National Conference.
                                                             **2**

9.      Two members of the non-academic staff of the University appointed by the non-academic staff of whom one shall be a member of UAP (Academic-Related) staff and one shall be a member of Non-UAP staff.
                                                             **2**

**Co-opted members**

10.     Such other persons, not being members of the academic staff or salaried officers of the University or students, and not exceeding seventeen in all, as may be co-opted by the Council, provided that there shall be at least one member so co-opted who shall be a graduate of the University.

                                                             **17**

**TOTAL MEMBERSHIP OF THE COUNCIL**                          **34**

**GOVERNANCE REVIEW REPORT**

Role of members of the Council and the Council Committees

This appendix sets out the new proposal for the role of members of the Council and the Council committees.  It has been adapted from guidance given in the CUC guide for members of HE governing bodies in the UK and includes extracts from the Council's current Standing Orders.  It is intended that this role statement is incorporated into the letter of appointment of new members of the Council and its committees.

**1      Summary of Responsibilities of Members of  the Council**

1.1     Higher education institutions (HEIs) are legally independent corporate institutions that have a common purpose of providing learning and teaching and undertaking research.  They also have an important role in contributing to economic growth through research and developing links with industry and the community (so-called 'third leg' or 'third mission' activities).  The governing body, which in the case of the Open University is the Council, is responsible for ensuring the effective management of the University and for planning its future development.  It has ultimate responsibility for all the affairs of the University.

1.2     The main responsibilities of the Council are set out in its Statement of Primary Responsibilities, which is a separate document.

1.3     External and co-opted members need to bring particular behaviours to the Council.  They should question intelligently, debate constructively, challenge rigorously and decide dispassionately, and they should listen sensitively to the views of others, inside and outside meetings of the Council.

1.4     Individual members of the Council, members of Council committees and the Council as a whole should at all times conduct themselves in accordance with accepted standards of behaviour in public life, which embrace selflessness, integrity, objectivity, accountability, openness, honesty and leadership

1.5     The Council, and its members have a particular responsibility for aspects of the University's business.  These are set out in full in the Statement  of Role and Primary Responsibilities of the Council and are summarised below:

Proper Conduct of Public Business
Strategic Planning
Monitoring Effectiveness and Performance
Finance
Audit
Estate Management
Human Resource Management
Equality and Diversity
Student's Union
Health and Safety

**2        Proper Conduct for Members**

2.1      Members should be able to apportion sufficient time for University business.

2.2      External members should also take care not to become involved in the day-to-day executive management of the institution.  This also applies to the staff and student members except that in the course of their employment or in their activities as students, they may have executive responsibilities within the institution.

2.3      All members should exercise their responsibilities in the interests of the institution as a whole rather than as a representative of any constituency.  Members nominated by particular constituencies should not act as if delegated by the group they represent.  No member may be bound, when speaking or voting, by mandates given to him/her by others, except when acting under approved arrangements as a proxy for another member of the Council.

2.4      The Council and its committees exercise their responsibilities in a corporate manner; that is to say, decisions are taken collectively by all of the members acting as a body.  Members should not act individually, or as representatives of a constituency or in informal groups, to take decisions on governing body business on an ad hoc basis outside the constitutional framework of the meetings of the Council and its committees.

2.5      The Council has given powers to the Chair to take action on behalf of the Council between meetings.  This is incorporated into the Standing Orders.

> "The Council may grant delegated authority to the Chair to act on its behalf between meetings on matters of routine business.  The Chair shall be answerable to Council for any action which he/she takes on its behalf and a report shall be made to the next meeting of the Council detailing any Chair's action taken for endorsement by Council."

**3        Involvement in University Affairs**

3.1      All Council members should be available to sit on Council Committees if required.  External members are expected to become a member of at least one of the Council's committees, as part of their role.

3.2      Members are expected to attend meetings of the Council or the appropriate committees.  A record of attendance is maintained and monitored by the Membership Committee and there is a procedure for following up poor attendance.  Annual attendance figures are also published publicly in the University's Financial Statements.  This is part of the Council's effectiveness review process.

3.3      Members are expected to engage with the University, both through meetings and committees and by the fostering of links between external Council members and University functions and departments.  Council and co-opted committee members are strongly encouraged to attend award ceremonies and other University functions (open days, lectures etc.).

**4      Ambassadorial function**

Members of the Council and its committees are expected to promote the interests of the University.  They can work on behalf of the University in many ways.

a)      As ambassadors outside the University, especially in commercial, business and political/national spheres.

b)      Within the University by communicating with different groups of staff and students, explaining the work of the Council and gathering opinions.

c)      On behalf of the University on formal occasions and in other national University/HE fora.

**5      Briefing**

5.1     Members are expected to have sufficient awareness to make appropriate decisions on Council and Council committee business.  Information can be sought.

a)      Through training
b)      Visits within the University
c)      CUC seminars and other relevant conferences, workshops and seminars
d)      Links with University units
e)      Reading Council papers
f)      Other topical information made available in the press, on the website, newsletters etc.

5.2     Following initial induction, members will regularly receive copies of both the University's newsletter and the CUC newsletter (which is published three times a year), and appropriate publicity material about the University to help them stay up-to-date with developments.  There is an onus on members to keep themselves informed.

**6      Conflict of Interests**

6.1     Any member of the Council who has a clear and substantial interest in a matter under discussion shall declare that interest whether or not that interest is already declared in the Register of Interests.  Such declarations should make clear the interest and whether it carries either direct or indirect financial interest to the member.

6.2     Where such an interest constitutes a direct or indirect financial interest, the member involved shall withdraw from any meeting and not speak, participate in or otherwise seek to influence any decisions taken by the Council or its committees relating to the matter under discussion.

6.3     Where a member has an interest which is not financial, but which is relevant to the activities of the University, that interest shall also be declared.  Where the interest is substantial, the member involved shall withdraw from discussions or decisions relating to that interest.  Where an interest arises from membership of a public body, and where there is no financial interest, full participation in the discussion and decision is permitted.

6.4 In all circumstances, members shall ask themselves whether members of the public, knowing the facts of the situation, would reasonably conclude that the interest involved might influence the approach taken to the actions of the Council or of its committees. If so, the interest is sufficient for the member to declare that interest.

6.5 Members of staff of the University do not need to declare an interest or to withdraw from discussion when general terms and conditions of service of staff or a group of staff are considered. Similarly, members who are students of the University do not need to withdraw or declare an interest in issues of relevance to the student body as a whole including the setting of fees for courses. However, if a member of staff or a student has a particular interest in the issue which is greater than the interest of the group of staff or students as a whole, then that interest shall be declared and the member of staff or student shall withdraw from the meeting and not speak, participate in or otherwise seek to influence any decision taken by the Council or its committees relating to the matter under discussion.

6.6 Any such declarations of interest shall be recorded in the minutes.

**7 Linking with areas of the University**

Each external member of the Council will be linked to one or more units of the University and be involved in appropriate events, briefings and visits. To broaden expertise and avoid over-commitment to a particular area, each link will be for a maximum period of two years. External members will be encouraged to engage at an early stage with key issues for the University, to build up their knowledge over a wider area than their own experience and expertise.

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**GOVERNANCE REVIEW REPORT**

<u>Statement of Role and Primary Responsibilities – Open University Council</u>

The CUC Code of Practice recommends a statement of primary responsibilities of the Council which should be published on the internet and in the annual report together with identification of key individuals (already on the Freedom of Information site) and a broad summary of the responsibilities delegated to management. The Review Group has drawn up this statement of responsibilities.  The majority of the content of this appendix is new, with some wording being derived from the Council's Standing Orders and the CUC guidelines on general principles of governance.   This statement assumes that the Council agrees to delegate some of its responsibilities, as recommended in paragraph 9.3 of the report.

**1      Conduct of Governing Body Business**

The CUC Guide for Members of Higher Education Governing Bodies in the UK provides general principles of governance to which all Higher Education governing bodies should comply. These are set out below:

1.1      Proper Conduct of Public Business

Governing bodies are entrusted with funds, both public and private, and therefore have a particular duty to observe the highest standards of corporate governance.  This includes ensuring and demonstrating integrity and objectivity in the transaction of their business, and wherever possible following a policy of openness and transparency in the dissemination of their decisions. Such diverse funding sources also require that institutions adhere to the good practice appropriate to both public and private sector bodies.

1.2      Strategic Planning

The governing body has a duty to enable the institution to achieve and develop its mission and primary objectives of learning and teaching and research.  This responsibility includes considering and approving the institution's strategic plan, which sets the academic aims and objectives of the institution and identifies the financial, physical and staffing strategies necessary to achieve these objectives.

1.3      Monitoring Effectiveness and Performance

The governing body should regularly monitor its own effectiveness and the performance of the institution against its planned strategies and operational targets.

1.4      Finance

- The governing body's financial responsibilities include:
- ensuring the solvency of the institution and safeguarding its assets
- approving the financial strategy
- approving annual operating plans and budgets which should reflect the institution's strategic plan
- ensuring that funds provided by the Funding Council are used in accordance with the terms and conditions specified in the Funding Council's Financial Memorandum
- ensuring the existence and integrity of risk management, control and governance systems and monitoring these through the audit committee
- receiving and approving annual accounts (audited financial statements).

1.5     Audit

        The governing body is responsible for directing and overseeing the institution's
        arrangements for internal and external audit.

1.6     Estate Management

        The governing body is responsible for oversight of the strategic management of the
        institution's land and buildings.  As part of this responsibility it should consider, approve and
        keep under review an estate strategy that identifies the property and space requirements
        needed to fulfil the objectives of the institution's strategic plan, and also provides for a
        planned programme of maintenance.

1.7     Human Resource Management

        The governing body has responsibility for the institution's human resource and employment
        policy. This includes ensuring that pay and conditions of employment are properly
        determined and implemented for all categories of employee. The governing body is also
        responsible for appointing and setting the terms and conditions for the head of the
        institution and such other senior posts as it may from time to time determine.

1.8     Equality and Diversity

        The governing body should ensure that non-discriminatory systems are in place to provide
        equality and diversity of opportunity for staff and students.

1.9     Students' Union

        The governing body should take such steps as are reasonably practicable to ensure that
        the students' union operates in a fair and democratic manner and is accountable for its
        finances.

1.10    Health and Safety

        The governing body carries ultimate responsibility for the health and safety of employees,
        students and other individuals while they are on the institution's premises and in other
        places where they may be affected by its operations.  The governing body's duties include
        ensuring that the institution has a written statement of policy on health and safety, and
        arrangements for the implementation of that policy.

        **These responsibilities apply to the Council of the Open University.**

**2      The Charter of the Open University:**

        By authority of the Charter (Article 13) the Council is the executive governing body of the
        University and has custody and use of the common seal.  It is responsible for the
        management and administration of the University's revenue and property and, subject to the
        powers of the Senate, exercises general control over the conduct of the affairs of the
        University.

**3      Proper conduct of Business – The Open University Council**

3.1     The Council is collectively responsible for overseeing the University's activities, determining
        its future direction and fostering an environment in which the University mission is achieved
        and the potential of all learners is maximised.  The Council shall ensure compliance with the

statutes, ordinances and provisions regulating the institution and its framework of governance.

3.2 The Council is entrusted with funds, both public and private, and therefore has a particular duty to observe the highest standards of corporate governance, as set out in paragraph 1.1.above.

3.3 The Council and its individual members should at all times conduct themselves in accordance with accepted standards of behaviour in public life which embrace selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

3.4 The Council shall meet regularly, normally not less than four times a year (the statute for the Open University specifies not less than 3 times a year), in order to discharge its duties effectively. Members of the Council shall attend regularly and actively participate.

3.5 Certain items may be declared to be 'reserved', that is, business which for reasons of confidentiality has papers and minutes recorded separately and with restricted circulation. Such business should be kept to a minimum because of the general need for transparency and openness, but would normally include matters relating to an individual member of the University or commercially sensitive material.

3.6 To function efficiently, the Council must have rules for the conduct of its meetings. The Standing Orders provide:

• procedures for voting, rescinding decisions, calling extraordinary meetings, and declaring business reserved
• requirements for a quorum
• frequency of meetings.

The Standing Orders regulate those aspects of the conduct of that are not already prescribed by the Statutes and ordinances. Additionally, the Council's Standing Orders reiterate, where appropriate, the relevant provisions of the statutes and ordinances in order to consolidate all the material for ease of reference.

3.7 Members should refer to the Secretary for further information about the rules applying to the University.

3.8 The Council exercises its responsibilities in a corporate manner; that is to say, decisions are to be taken collectively by all of the members acting as a body. Members should not act individually, or as representatives of a constituency or in informal groupings, to take decisions on Council business on an ad hoc basis outside the constitutional framework of the meetings of the Council and its committees.

## 4 Mission and Strategy

The Council is responsible for:

a) approving the mission, and strategic vision of the University, its long term business plans, key performance indicators (KPI's) and annual budgets, ensuring that these meet the interests of the University's stakeholders;

b) appointing the head of the University as chief executive of the University and putting in place suitable arrangements for monitoring his/her performance;

c) ensuring the establishment and monitoring of systems of control and accountability, including financial and operational controls and risk assessment, clear procedures for handling internal grievances and for managing conflicts of interest;

d) monitoring institutional performance against plans and approved KPI's, which should be where possible and appropriate, benchmarked against other institutions.

## 5 The Appointment of the University's Officers

5.1 The Council is responsible, in accordance with Statute 3, for the institution of joint committees of the Council and the Senate.

5.2 The Chancellor, the Vice-Chancellor and the University Secretary are appointed by the Council on the recommendation of joint committees of the Council and the Senate. The Pro-Chancellor is appointed by the Council on the recommendation of an appointing committee.

5.3 The Pro-Vice-Chancellors, Deans and Directors of Central Academic Units are appointed by appointing committees.

5.4 The Treasurer is appointed by the Council on the recommendation of the Membership Committee and the Vice-Chair of the Council is appointed from among the external members on the recommendation of the Membership Committee.

## 6 Monitoring Effectiveness and Performance

The Council has in place procedures for monitoring performance.

6.1 The Council monitors its own performance annually through an effectiveness review incorporating a profile of the year's performance against responsibilities and a series of meetings of members with the Pro-Chancellor.

6.2 The Council institutes quinquennial reviews of governance.

6.3 The performance of the Vice-Chancellor is monitored through annual discussions with the Pro-Chancellor.

6.4 The Council receives reports and assurances regularly and annually from its specialist committees.

## 7 Students Union

7.1 The Council has the responsibility to take such steps as are reasonably practicable to ensure that the students' union operates in a fair and democratic manner and is accountable for its finances.[1]

7.2 For this purpose, the Council receives an annual report from OUSA whereby it will approve changes to the Constitution in accordance with the 1995 Education Act and, also receive, after submission to the Finance Committee, the financial statements from the Students' Association.

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[1] CUC general principles of governance – Students Union

**8      Regulatory Powers**

8.1    The Council, after consultation with the Senate may by Special Resolution make Statutes for the University which may add to, amend or repeal the Charter and Statutes subject to the approval of the Privy Council.

8.2    A "Special Resolution" means a Resolution passed at one meeting of the Council and confirmed at a subsequent meeting held not less than one calendar month nor more than three calendar months after the former meeting.  Provided that notice of each meeting shall be given to each member of the Council not less than fourteen days before the meeting to be held and that the Resolution be passed at each meeting by a majority of not less than three-fourths of those present and voting.

8.3    The Council makes Ordinances (on the recommendation of Senate for those concerning academic matters).

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**Schedule of Delegation**

| | Power/Function of the Council | Power stays with Council | Power already delegated | Power to be delegated | Delegation recommended |
|---|---|---|---|---|---|
| 1. | To appoint the Pro-Chancellor (who shall be the Chairman of the Council) and a Vice-Chairman. | √ | | | The responsibility for both appointments stays with the Council. No change needed. |
| 2. | To co-opt members of the Council as provided for under Statute 11. | √ | | | This responsibility stays with the Council. No change needed to the process. However the Review Group is recommending that the Chairman of the Council should chair the Membership Committee. |
| 3. | Jointly with the Senate to appoint the Chancellor. | √ | | | The appointment of the Chancellor to stay with the Council and the Senate. |
| 4. | After consultation with the Senate where prescribed, to appoint the Vice-Chancellor, Pro-Vice-Chancellors if it shall consider it appropriate to do so, and the Treasurer<br><br>Statute 8 (3)<br>The successors to the first Secretary shall be appointed by the Council after consultation with the Senate. | Treasurer √<br><br>VC√<br><br><br><br>Secretary √ | | PVC's √ | This responsibility stays with the Council.<br><br>Responsibility stays with the Council. Senate may delegate to the appointing committee.<br><br>Council responsibility to be delegated to the appointing committee. Senate has already delegated its powers to the appointing committee.<br><br>Because of the special relationship of the office of the Secretary with the Council, the appointment stays with the Council. |
| 5. | Subject to the provisions of Article 20 of the Charter, to make Statutes. | √ | | | Responsibility stays with the Council for statutes and ordinances. |
| 6. | On the recommendation of the Senate, to authorise the creation of academic posts in the University. | | √ | | Acknowledgment of delegation to the Vice-Chancellor and Planning Resource Officers (PRO's) is required within overall budgets set by the Council on the advice of Finance Committee and Strategic Planning and Resources Committee. |
| 7. | On the recommendation of the Senate, to institute degrees, diplomas, certificates and other academic distinctions offered by the | | | √ | This responsibility should be delegated to the Senate unless there are major strategic and resource implications or for new academic areas. |

**Schedule of Delegation**

| | Power/Function of the Council | Power stays with Council | Power already delegated | Power to be delegated | Delegation recommended |
|---|---|---|---|---|---|
| | University or on its behalf as validated awards or jointly with other higher education institutions having the power to grant such qualifications. | | | | |
| 8. | On the recommendation of the Senate, to withdraw degrees, diplomas, certificates and other academic distinctions offered by the University or on its behalf as validated awards or jointly with other higher education institutions having the power to grant such qualifications. | | | √ | This responsibility should be delegated to the Senate unless there are major strategic and resource implications.<br><br>(converse of 7 above) |
| 9. | On the recommendation of the Senate, to suspend or abolish any academic post except any posts created by these Statutes. | | √ | | Acknowledgement of delegation to the Vice-Chancellor and PRO's required within overall budgets set by the Council on the advice of Finance Committee and SPRC.<br><br>(converse of 6 above) |
| 10. | On the recommendation of the Senate, to determine the conditions of appointment of the academic staff. | | √ (1) | | 1 a) Salaries for senior academic staff are approved by the Vice-Chancellor.<br>b) Salaries for senior academic-related staff are approved by the Secretary.<br>c) The Remuneration Committee:<br>i) Determines the remuneration and terms and conditions of service of the Vice-Chancellor.<br>ii) Determines the salary of the University Secretary on appointment and modifications, if any, to the normal terms and conditions of service for academic-related staff.<br>iii) Considers and determines annually, or as may be required from time to time in particular instances, the level of responsibility allowance payable to Pro-Vice-Chancellors and discretionary increases in the salaries of the Vice-Chancellor, the University Secretary and the Pro-Vice-Chancellors.<br>iv) Considers and to determines annually, or as may be required from time to time in particular |

## Schedule of Delegation

| Power/Function of the Council | Power stays with Council | Power already delegated | Power to be delegated | Delegation recommended |
|---|---|---|---|---|
| | √ (2) | | | instances, discretionary increases in the salary of individual members of staff in professorial or equivalent grades.<br><br>v) Considers and determines annually, or as may be required from time to time in particular instances, the level of responsibility allowances paid to office holders.<br><br>2. Terms and Conditions – the responsibility should remain with the Council reported through the Staff Strategy Committee. The Senate has the power to review from time to time the duties and conditions of service of all members of the academic staff (Statute 16 (6)). |
| | | √ (3) | | 3. Pay structures have been delegated to the management through the Vice-Chancellor following negotiations with unions (the Council can determine to adhere to the national pay bargaining agreements or not). |
| 11. To approve the procedures for the appointment of members of the academic staff. | √ | | | The policy for appointment procedures is approved by the Council on the advice of the Staff Strategy Committee. The Senate has the power to appoint all members of the academic staff in accordance with procedures approved by the Council (Statute 16 (7)). |
| | | √ | | Delegation of the operation of procedures is to the Vice-Chancellor and heads of units. |
| 12. To regulate the appointment of all other members of the University staff, and to supervise the salaries and conditions of tenure of posts to which it appoints. | | √ | | Staff Strategy Committee terms of ref:<br>To advise the Council, subject to the powers of the Senate in respect of academic staff, on the determination of policies and strategies concerning the University's full-time and part-time staff. |

## Schedule of Delegation

| | Power/Function of the Council | Power stays with Council | Power already delegated | Power to be delegated | Delegation recommended |
|---|---|---|---|---|---|
| | | | | | To authorise and monitor the implementation of such policies and strategies through responsible University bodies and individuals |
| 13 | On the recommendation of the Senate, to establish the organs of academic administration, to prescribe their constitution and functions, and to modify or revise the same. | √ (1)<br><br>√ (2)<br><br><br><br><br>√ (3) | | √ (2)<br><br><br><br><br><br>√ (3) | 1  New faculty structures should be approved by the Council via SPRC.  If there are significant resource/reputational implications.<br><br>2  The abolition of faculties, schools and centres should come to the Council for approval if there are significant resource/reputational implications, via SPRC.<br><br>3  The Senate constitution requires approval from the Council.  Council would expect to review the academic governance structure through the Senate's annual effectiveness report. |
| 14. | To establish joint committees of the Council and representatives of the students and to prescribe the method of appointment of such representatives and the functions of such committees. | √ | | | This responsibility stays with the Council. |
| 15. | To review the work of the University and of bodies approved by the University to act on its behalf in offering validated awards, and of such other higher education institutions, having the power to grant Degrees and other academic distinctions, as are approved by the University to act jointly with it in the award of such qualifications and, subject to the powers of the Senate, to take such steps as it thinks proper for the purpose of advancing the interests of the University and such bodies as aforesaid, maintaining efficiency and standards, encouraging teaching, the pursuit of learning and the prosecution of research therein. | √ | | | The review of the work of the University and of bodies approved by the University to act on its behalf stays with the Council. |

**Schedule of Delegation**

| | Power/Function of the Council | Power stays with Council | Power already delegated | Power to be delegated | Delegation recommended |
|---|---|---|---|---|---|
| | | | | | |
| 16. | On the recommendation of the Senate to provide as necessary for the welfare of the students of the University. | √ | | √ | The Council retains the overall responsibility for the welfare of students. Strategies with major resource implications would require Council approval (eg. fees policies). Codes of practice for student discipline etc should be delegated to the Senate. |
| 17. | After consultation with the Senate, to determine all University fees. | √ | √ | | Setting of specific fees has been devolved to SPRC. The Council retains approval of fees policies. |
| 18. | On the recommendation of the Senate and subject to any conditions made by the founders, to institute Fellowships, Scholarships, Studentships, Prizes and other aids to study and research. | | | √ | Formal delegation required to the management. |
| 19. | To govern, manage and regulate the finances, accounts, investments, property, business and all affairs whatsoever of the University, and for that purpose to appoint a Finance Committee with a constitution and delegated powers as determined by the Council, Bankers and any other officers or agents whom it may seem expedient to appoint, provided that before determining any question of finance which directly affects the educational policy of the University the Council shall first seek and consider the views of the Senate. | √ | | | 1. There is a conflict between the terms of reference for the Finance Committee which state: "To approve such transactions as are remitted to the Committee for approval under the University's Financial Regulations including the formation , financing and disposal of subsidiary undertakings"<br><br>However the Financial Regulations state, for the creation of a related undertaking or disposal "Final authorisation for the creation of a related undertaking must only be given by the Council acting on the advice of the Finance Committee"., and "Authorisation for the exit from a related company will only be given by the University's Council acting on the advice of the Finance Committee."<br><br>A change to the terms of reference of the Finance Committee is required. The establishment and disposal of subsidiary undertakings stays with the Council. |

**Schedule of Delegation**

| | Power/Function of the Council | Power stays with Council | Power already delegated | Power to be delegated | Delegation recommended |
|---|---|---|---|---|---|
| | | | | | 2. Currently the audit fee is negotiated by the Finance Division and reported to the Audit Committee. The Audit Committee recommends the appointment of the external auditors to the Council. The Audit Committee terms of reference state:<br><br>"To consider for recommendation to the Council the appointment of the external auditor, the audit fee, the provision of any non-audit services by the external auditor and any questions of resignation or dismissal of the external auditor".<br><br>The Council should retain the approval of the audit fee on the recommendation of the Audit Committee together with the appointment of the external auditor, the policy for the provision of non audit services provided by the external auditor and any questions of resignation and dismissal of the external auditor. |
| 20. | To invest, on the advice of the Finance Committee and the Treasurer, any moneys belonging to the University in such stocks, funds, fully paid shares or securities as the Council shall from time to time think fit, whether within the United Kingdom or not or in the purchase of freehold or leasehold hereditaments in the United Kingdom including rents. Provided that in the case of moneys held by the University as trustees the powers conferred by the paragraph shall be exercised subject to the provisions of the law relating to investment by trustees. | | √ | | 1. The Finance Committee reviews and approves the University's investment policy.<br>2. The Financial Regulations state: "All investments shall be made in the name of the Open University or in the name of nominees approved by the Finance Committee in accordance with decisions made by the Finance Committee from time to time".<br><br>The Finance Director and Finance Division undertake investment in the name of The Open University.<br>The University does not hold money as a trustee. |
| 21. | To sell, buy, exchange, lease and accept leases of real and personal property on behalf | √ | √ | | The Council retains approval for capital projects over £5M, |

## Schedule of Delegation

| | Power/Function of the Council | Power stays with Council | Power already delegated | Power to be delegated | Delegation recommended |
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| | of the University. | | | | otherwise delegation is to the Finance and Estates Committees. |
| 22. | To provide and maintain the buildings, premises, furniture, apparatus, services and other means needed for carrying on the work of the University. | | √ | | Responsibility is delegated to the Estates Committee. The Estates Committee terms of reference state: "To consider the development of the Estates service, amenities and the working environment to advise University officers, the Strategic Planning and Resources Committee and the Council as appropriate". |
| 23. | To borrow money on behalf of the University and for that purpose, if the Council thinks fit, to mortgage or charge all or any part of the property of the University whether real or personal, and to give such other security as the Council shall think fit. | √ | | | This power remains with the Council, on the recommendation of the Finance Committee. |
| 24. | To enter into, vary, carry out or cancel contracts on behalf of the University. | √ | √ | | This power is delegated to the management and the Financial Regulations determine the signatures for specific types of contracts. |
| 25. | To make provision for schemes of insurance, superannuation, pensions or retirement benefits for all members of the academic and other staff, and so far as the Council shall think fit for other employees of the University or their dependants. | | √ (1) | | 1. The University's Financial Regulations state: **16.1 Insurance Cover** Director of Finance with the advice of the University's brokers, maintain policies of insurance to protect the University's interests and shall negotiate all insurance after consultation, where appropriate, with the Unit concerned. Where any other body is required to indemnify the University the Finance Director shall decide the cover required and shall inspect the policies and arrange for their endorsements as appropriate. |

**Schedule of Delegation**

| | Power/Function of the Council | Power stays with Council | Power already delegated | Power to be delegated | Delegation recommended |
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| | | √ (2) | √ (3) | | The levels of cover and premiums are reported annually to Finance Committee. <br><br> 2. The Council retains the power of approval for superannuation schemes. <br> The Staff Strategy Committee and the Finance Committee would recommend provisions. <br><br> 3 a) Early retirement benefits are delegated to the Remuneration Committee which considers and determines matters relating to the early retirement, voluntary severance or other special termination arrangements of the Vice-Chancellor, the University Secretary and the Pro-Vice-Chancellors <br><br> b) A panel reporting to the Remuneration Committee annually considers early retirement benefits for other university staff. |
| 26. | To select a Seal, Arms and Insignia for the University and to have the sole custody and use of the Seal. | √ | √ | | The Council has delegated the custody of the seal to the Secretary, and the use of the Seal is approved by 2 Council members or 1 Council member and the Secretary. |
| 27. | To prescribe forms of official and academic dress. | | | √ | This power should be delegated to the Senate. |
| 28. | To confirm Regulations submitted by the Senate for any matters in respect of which Regulations are authorised to be made. | | | √ | These regulations relate to academic issues and should be delegated to the Senate. <br><br> The Charter states: <br> "Subject to the provisions of this Our Charter and of Statutes … the Senate may make Regulations, subject to confirmation by the Council, to direct and regulate the University and its authorities and members. The power to make … Regulations shall include the power to add to, amend or repeal … Regulations therefore made. Such … Regulations shall not be repugnant to the provisions of the |

**Schedule of Delegation**

| Power/Function of the Council | Power stays with Council | Power already delegated | Power to be delegated | Delegation recommended |
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| | | | | Statutes or of this Our Charter." |
| 29. Generally to exercise all such powers as are or as may be conferred on the Council by the Charter and the Statutes, including the power to make Ordinances in the exercise of the powers expressly set out above, and of all other powers vested in the Council. | | | | Mission/ strategy/ policy/institutional performance/ effectiveness of governance/ monitoring should be retained by the Council.<br><br>Delegation of approval for day to day issues by the Chair between meetings continues in accordance with Standing Orders. |
| 30. Statute 19<br>Congregation – conferring of degrees, Statute 19 states:<br><br>1 For the purpose of conferring Degrees of the University, there shall be held a meeting of members of the Senate and Council which shall be called a Congregation.<br>2 A Congregation shall be held at least once every year at such time and place as shall be determined by the Senate, and shall be presided over by the Chancellor or, in his absence, by the Vice-Chancellor or another Officer of the University designated by the Chancellor to act on his behalf for the occasion.<br>3 The procedure for summoning a Congregation, for the presentation of graduands and for the conferring of Degrees in absentia, and all other matters relating to Congregation shall be determined by the Senate.<br>4 Subject to the approval of the Council, the Senate may delegate by regulation any powers conferred upon it by the Statute to any person or body of persons constituted for the purpose. | √ | | √ | The current practice is for the Pro-Chancellor, Vice-Chancellor and Secretary to act as congregation before each Council meeting and sign a document which they are not able to confirm. It contains no names, or how the degrees were awarded. The award process has been undertaken by the gradings/awards committees and through the University's procedures.<br><br>It would be more appropriate for the congregation approval to be delegated to the Director, Students. |
| 31. Statute 20<br>The Pro-Chancellor, the Treasurer and any member of the Council (other than Ex-officio | √ | | | This power to be retained by the Council. |

**Schedule of Delegation**

| | Power/Function of the Council | Power stays with Council | Power already delegated | Power to be delegated | Delegation recommended |
|---|---|---|---|---|---|
| | Member or a member of the academic staff to whom Statute 21 applies) may be removed from office for good cause by the Council. No person shall be removed from office by the Council unless he shall have been given a reasonable opportunity of being heard by the Council. | | | | |
| 32. | Statute 21<br>Statute 21 relates to specific procedures for academic staff in relation to redundancy, discipline, dismissal, removal from office and grievance. | √ | √ | | In Statute 21, the Council is responsible, in these procedures, for appointing the committees, tribunals or boards relevant to each process. This role has been delegated by the Council to a Nominating Advisory Committee for disciplinary and grievance procedures, dismissal procedures and procedures for removal for incapacity on medical grounds.<br>The Council appoints a Senate member of the Council to the Nominating Advisory Committee.<br>The Council retains its powers in relation to redundancy procedures. This is re-emphasised in Statute 23(1). |

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# GOVERNANCE REVIEW REPORT

## Responsibilities of the Committees of the Council

### Audit Committee

The Audit Committee comprises wholly lay members, drawn from both within and outwith the Council, and so has no executive responsibility.

The Audit Committee relies substantially on the work of the internal and external auditors, on the information provided by management and on the response of management to the questions it raises.

The remit of the Audit Committee includes:

- reviewing the effectiveness of arrangements for risk management, control, and governance;
- satisfying itself and assuring Council, with advice from the Chief Auditor, that satisfactory arrangements are in place to promote economy, efficiency and effectiveness;
- reviewing and approving the terms of reference of the internal audit function and monitoring its performance and effectiveness;
- advising the Council, as necessary, on the appointment and remuneration of the external auditors, and monitoring their performance and effectiveness;
- reviewing with external auditors the scope and nature of the audit, including the report to Audit Committee written by the external auditors;
- assessing compliance with the regulatory framework relating to audit issues.

### Estates Committee

The Estates Committee develops the University's estates strategy for recommendation to the Council. It recommends the rolling capital programme and monitors progress and expenditure thereon.

### Finance Committee

The Finance Committee reviews and then recommends to Council the University's annual revenue and capital budgets and monitors performance in relation to the approved budgets. It reviews and then recommends to Council the financial regulations and financial policies that are applied by management. It reviews the annual financial statements, including significant matters of judgement arising that require review, and meets with the external auditors to discuss the outcome of their audit; it then recommends the financial statements to Council for approval.

### Membership Committee

The Membership Committee brings forward recommendations for the appointment or re-appointment of co-opted members of the Council, including recommendations on periods of office. It also makes recommendations to the Council for the appointment of Council members to committees of the Council and committees of the University to which Council members are appointed. Its recommendations to Council take into

account the balance of skills, knowledge and experience of Council members and are based on assessment against objective criteria.  It also considers issues of succession planning within the Council.  It provides the Council with an annual review of attendance at meetings of the Council and its committees.


**Remuneration Committee**

The Remuneration Committee determines the annual remuneration of the most senior staff, including the Vice-Chancellor.  The cost of living salary increases for all staff are determined by national pay negotiations for all universities.  The employee members have no involvement in determining their own salaries.


**Staff Strategy Committee**

The Staff Strategy Committee advises the Council, subject to the powers of the Senate in respect of academic staff, on the development and approval of policies and strategies concerning the University's full and part-time staff.  In fulfilling this role, it authorises the implementation of such policies and strategies and monitors these through University bodies or individuals.


**Strategic Planning and Resources Committee**

In respect of its strategic and development responsibilities, the Council receives recommendations and advice from Strategic Planning and Resources Committee, a joint committee of the Council and of the Senate, the body responsible for the University's academic affairs.  It recommends to Council the distribution of resources within the University on the basis of its strategic direction and requirements.


(Corporate governance statement in the 2003/04 financial accounts)


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