

## The Role and Duties of Council Members

### Introduction

This guidance note is intended to provide you with a summary of your core roles and duties as a member of UCL Council. The note is divided into five main sections:

1. UCL Council and your role
2. Duties and responsibilities of members
3. Declarations and conflicts of interest
4. Confidentiality
5. Effective conduct of business

At the end of the note, there is also a list of web links where further helpful information and guidance can be found. Please note that this guidance is intended as a non-exhaustive summary of core issues only. It is ultimately your responsibility to ensure you are aware of your responsibilities as a member of Council (and therefore as a trustee of UCL). If you have any questions in relation to its contents, or if any aspect of your role as a member of UCL Council is unclear, please contact the Assistant Secretary to Council, Olivia Whiteley ([o.whiteley@ucl.ac.uk](mailto:o.whiteley@ucl.ac.uk)).

### 1. UCL Council and your role

- 1.1. UCL was established and is governed by a Royal Charter and Statutes which grant UCL Council as UCL's governing body the power to manage and administer the property of UCL and to conduct its affairs, subject to the advice of the Academic Board on matters of academic policy. Council approves UCL's mission and strategic vision and its long-term academic and business plans. Council delegates authority to the Provost, as chief executive, for the academic, corporate, financial, estate and human resources management of UCL.
- 1.2. As an exempt charity, UCL is also regulated by charity law (under the Charities Act 2011) with the Office for Students (OfS) its principal regulator. As a member of Council, you are therefore a charity trustee, and owe fiduciary and other duties to UCL (see section 2 below).
- 1.3. All Council members are under a legal obligation as trustees to exercise their responsibilities in the interests of UCL as a whole, rather than as representatives of any particular constituency. Members must not put themselves under any obligation, financial or otherwise, to other individuals or

organisations that might seek to influence them in the performance of their duties as members of UCL's Council. Any line-management relationship that exists between Council members should be set aside within the context of carrying out Council business.

- 1.4. Members whose views are not consistent with the decisions of the governing body should abide by the principle of collective decision making and avoid putting specific interests before those of the institution. Individually they must not make any agreement for which they do not have authority.
- 1.5. The Council has twenty members comprising three Ex Officio members, eleven Appointed members and six Elected members. The Ex Officio members are the Provost and two Students' Union Officers designated by the Students' Union. The eleven Appointed members are external to UCL and therefore must not be employees or students of UCL; they are appointed by Council. Three of the Elected members are Professors elected by and from the professorial members of Academic Board. Three of the Elected members are elected by and from the elected non-professorial academic staff members of Academic Board.
- 1.6. The Council's Nominations Committee is charged by Council to keep under continuous review the overall profile of the membership of Council to reflect the diversity of contemporary society.
- 1.7. Members bring to the Council's deliberations a wide range of experience, expertise and knowledge and are expected to apply independence, objectivity and balanced and disinterested judgement to these deliberations.
- 1.8. In addition, the qualities expected of Council members include:
  - a commitment to UCL and its mission;
  - the ability to understand and analyse complex issues in the world of contemporary higher education;
  - the ability to engage in constructive debate and decision-making at a strategic level; and
  - an understanding of the distinction between governance and management.
- 1.9. The Council's members have a major part to play in shaping UCL's strategy through developing an understanding of the issues affecting UCL as a whole, and contributing to UCL's effective governance. The management of UCL's activities within the strategic framework set by Council is the responsibility of the Provost and those staff to whom the Provost delegates authority.
- 1.10. As part of their initial briefing, new Appointed members of Council are provided with suggestions for how they may like to develop and sustain an engagement with the life of UCL, beyond the formal meetings of Council, in ways best

suited to their particular interests and knowledge of UCL and responsibilities of Council.

- 1.11. According to UCL's Statutes, there shall be at least three meetings of Council held in every year. In practice, Council meets usually six times a year, in addition to holding an annual away day, which Council members are asked to make every effort to attend. A series of events for Council members are arranged on meeting days throughout the year, including lunch visits hosted by UCL Faculties and Departments. The Chair of Council's Annual Dinner ordinarily takes place on the evening of the July Council meeting. Members are also regularly invited to UCL graduation ceremonies, inaugural and public lectures and other UCL events.
- 1.12. Certain Appointed members of Council – notably the Chair, the Vice-Chair and the Treasurer – are Ex Officio members of various other UCL committees; there are also a number of places for other Appointed, Elected and Ex Officio members of Council to serve on these and/or other UCL committees. The constitutions of Council's formal committees are set out in UCL's Regulations for Management.
- 1.13. UCL recognises that the Appointed member's role requires a significant commitment of time, and that Appointed members will often have demanding professional and other commitments outside UCL. It is expected nevertheless that Appointed members will be available to serve on at least one other formal Council committee, and to serve on one panel/sub-group each year, and may be asked to chair Council committees.
- 1.14. UCL has also produced a more detailed note of the primary responsibilities of Council as a body, a link to which can be found in the "Useful Links" section of this guidance.

## **2. Duties and responsibilities of members**

### General duties

- 2.1. The Charities Act 2011 establishes criteria for disqualification of charity trustees. It is therefore essential that Council members are not disqualified from being trustees. The full list of disqualifications is listed in the starter declaration form, which members are asked to sign on joining Council to confirm their willingness and fitness to act as Trustees. The Secretariat will also carry out a series of checks of open registers, such as Companies House, as well as internet searches, to verify that there is no information that contradicts the declaration.

- 2.2. The University is regulated by the Office for Students (OfS) and, as part of the OfS regulatory requirements, members of governing bodies must be fit and proper persons. A fit and proper person:
- is of good character;
  - has the qualifications, competence, skills and experience that are necessary for their role;
  - is able by reason of their health, after reasonable adjustments are made, to properly perform the tasks of the office or position for which they are appointed;
  - has not been responsible for, been privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether unlawful or not) in their employment or in the conduct of any entity with which they are or have been associated.
- 2.3. Further details of indicators that a person may not be a fit and proper person are stated in the [OfS regulatory requirements](#).
- 2.4. All members of Council are subject to the same duties when acting in their capacity as Council members. The key duties that you owe to UCL as a Council member are to:
- ensure UCL is carrying out its purposes for the public benefit;
  - comply with UCL's governing document (Charter and Statutes) and the law;
  - act in UCL's best interests;
  - manage UCL's resources responsibly;
  - act with reasonable care and skill; and
  - ensure UCL is accountable.
- 2.5. As a member of the Council you must ensure that UCL carries out its charitable purposes and no other purposes. The purposes must also benefit the public. As charity trustees, Council members must ensure UCL funds are only spent on its charitable purposes and no other purposes.
- 2.6. Council members must make decisions in line with its governing document, comply with charity law and any other legal requirements. Charity trustees should read relevant advice and seek advice when needed. Council members are advised to read [Charity Commission guidance CC3a, Charity trustee: what's involved](#).
- 2.7. Council members must act in UCL's best interests. When making decisions you must decide what will best enable UCL to fulfil its purposes. Decisions must be adequately informed with a balance struck between short-term and long-term consequences.
- 2.8. All members of Council must avoid potential or actual conflicts between your duties to UCL as a whole and your personal interests or your duties to others.

This includes any duties owed to other UCL-related bodies. Where a conflict cannot be avoided it must be managed appropriately (see Section 3 below).

- 2.9. All members of Council are expected to conduct themselves in a manner appropriate to public office holders and to adhere to the seven principles of public life (see Appendix One).
- 2.10. Council members must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence (sound judgement). There must be appropriate safeguards and measures to protect UCL's assets. Inappropriate risks should not be taken with UCL's assets or reputation. UCL must comply with any restrictions on spending funds and rules on borrowing.
- 2.11. Council members must act with reasonable care and skill, making use of any specific skills and experience. Council members must give sufficient time and energy to the role and actively participate.

#### Personal liability of members

- 2.12. It is extremely rare, but not impossible, for trustees to be held personally liable:
  - To the charitable institution, if they cause a financial loss by acting improperly;
  - To a third party that has a legal claim against the charitable institution which the charitable institution cannot meet.
- 2.13. The law generally protects trustees who have acted honestly and reasonably from personal liability to their charity. The Commission and the courts:
  - Can relieve trustees from liability if they have acted honestly and reasonably and have not benefited from their actions;
  - Rarely enforce liability on an unpaid trustee who has made an honest mistake;
  - Expect higher standards from trustees who act in a professional capacity or are paid for being trustees.
  - Cannot relieve trustees of their duty to account for (i.e. repay) an unauthorised payment or benefit from their charity.
- 2.14. There is no legal protection for trustees who have acted dishonestly, negligently or recklessly. However, there may be financial protection for those trustees who have made an honest mistake and can rely on the indemnity provisions in the charity's governing document, insurance cover or relief from the Commission or the court.
- 2.15. The Committee of University Chairs (CUC) Guide for Members of Higher Education Governing Bodies in the UK (March 2009) contains guidance on the

personal liability of members of higher education governing bodies – an excerpt of key clauses is in Appendix Two.

- 2.16. The CUC Guide also includes the following note to governing bodies on legal compliance:

“Governing bodies should ensure that their institutions comply with all relevant legal requirements – for example those relating to health and safety; human rights; data protection; freedom of information; race relations; gender, age and disability discrimination – and other legal obligations, such as contracts made in the institution’s name. They should also ensure that appropriate processes and procedures are in place to achieve such compliance.”

- 2.17. UCL holds a ‘Directors & Officers’ insurance policy with a cover of £22m which covers all members of UCL Council (external, staff and student members) on any one claim basis and in the aggregate basis. The D&O policy is worldwide with some minor exclusions on what is covered. The policy states that those persons covered by the policy ‘are covered in their personal capacity against damages and legal costs and expenses arising from claims made against them by reason of wrongful acts committed by them in their capacity as [members of Council]’. Moreover, in the event that a higher education institution is no longer financially viable, the members of the governing body have no financial liability.
- 2.18. UCL asks new Council members to sign an undertaking that they understand and accept the responsibilities they are taking on.

### **3. Declarations and conflicts of interest**

- 3.1. In line with the [Charity Commission guidance on managing conflicts of interest](#), as a trustee you must make decisions based only on what is best for UCL and not allow your personal interests, or the interests of people or organisations connected to you, to influence these decisions. It is your responsibility to avoid potential or actual conflicts between your duties to UCL as a whole and your personal interests or your duties to others. This includes any duties owed to other UCL-related bodies.
- 3.2. The Council maintains a Register of Interests of all its members and officers, which is available for public scrutiny. All Council members are required to keep their Register entry up to date and to declare any interests they have in items on the agenda for a meeting of Council at the commencement of the meeting. In some circumstances a conflict of interest may be sufficiently strong to necessitate a member taking no part in the discussion of that item, or being asked to withdraw from the meeting for the item, at the discretion of the Chair.

- 3.3. Where a potential conflict arises, you must disclose the conflicting interests to the Council in sufficient detail for the Council to be able to give its informed consent. If the conflict involves another body that you owe duties to, you would also need to obtain the informed consent of that body. If the Council is satisfied that, despite the potential conflict, you can still comply with your duty to act in good faith in the interests of UCL as a whole then it might decide to waive the conflict and you can continue to participate in relevant discussions and decisions. Where necessary, you should also seek the consent of the Council and/or the relevant other body to your not using or disclosing the confidential information of one body when performing your role for the other.
- 3.4. Where the Council does not waive a conflict, or where an actual rather than a potential conflict arises, you should take steps to avoid breaching your duty to avoid conflicts. Such steps could include excluding yourself from information, discussions or decisions (whether in meetings or otherwise) which will or might relate to the conflict matter. For a specific transaction, a conflict of interest may be sufficiently strong to necessitate a member taking no part in the discussion of that item, or being asked to withdraw from the meeting for the item, at the discretion of the Chair. In exceptional cases, steps may include resigning from your position on the Council, the other relevant body, or indeed both.
- 3.5. Council members must also not receive any personal benefit from UCL unless it is properly authorised and is clearly in UCL's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner.

#### **4. Confidentiality**

- 4.1. The official record of Council meetings is the minutes of the meeting. The business of Council is categorised as either Confidential, Reserved or Open business.
- 4.2. Council business that is Confidential or Reserved is restricted to matters which are commercially sensitive, or where disclosure might lead to damage or loss to UCL and/or third parties, or to matters relating to individuals where disclosure might infringe their rights to privacy. Members must not disclose matters which are in papers (or separately) designated as confidential, or the discussion of those items. The decision on which items are confidential is a judgment for Council. Approval of the agenda is delegated to the Chair, but it is entirely proper that members should be able to discuss whether or not a particular item should be confidential.
- 4.3. Under the provisions of Statute 17, Council is permitted to determine areas of business which are 'reserved' and not for the participation of the student members of Council; there is not, however, a practice by which Council exercises its permission to designate business as 'reserved'.

- 4.4. 'Open' business consists of those types of recorded information (eg papers or Minutes) which are disclosable under the Freedom of Information Act. Even in the case of open business, it is important that members are mindful of the principle of collective decision-making in making any statement about Council discussions or decisions. Free and frank debate is central to good governance. In that context, it is important that members do not feel any inhibition on their ability to speak freely, and express views in debate which may be controversial, or which they may modify in the light of subsequent discussion and consideration. For that reason, members should avoid reporting views expressed at Council meetings in ways that are attributable to individuals or contradict the official record of the meeting that is recorded in the minutes, even on matters discussed in non-confidential business.
- 4.5. Although this is an unlikely eventuality, in the case of a breach or threatened breach of confidentiality, the party owed the duty of confidence could have the right to take action against an unlawful disclosure.
- 4.6. If members are in any doubt over the confidentiality or otherwise of any matter, please seek advice from the University Secretary, David Pacey ([d.pacey@ucl.ac.uk](mailto:d.pacey@ucl.ac.uk)).

## 5. Academic Freedom

- 5.1. Academic Freedom at UCL is enshrined in the Statutes, which state:
1. This Statute and any Regulation made under this Statute shall be construed in every case to give effect to the following guiding principles, that is to say:
    - (a) To ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges;

*[Statute 18 Academic Staff, Part 1 Construction and Application, Construction.]*

### Useful Links

- [UCL Council Member Handbook](#)
- [UCL Council: Statement of Primary Responsibilities](#)
- [Charity Commission for England and Wales](#)
- [Charity Commission guidance on conflicts of interest](#)
- [UCL's Charity Information](#)
- [Committee of University Chairs Higher Education Code of Governance](#)
- [Office for Students, Terms and conditions of funding for higher education institutions](#)



### **Seven Principles of Public Life**

Also known as the Nolan Principles, the Seven Principles of Public Life apply to anyone who works as a public office-holder.

**Selflessness:** Holders of public office should act solely in terms of the public interest.

**Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

**Objectivity:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

**Accountability:** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**Openness:** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**Honesty:** Holders of public office should be truthful.

**Leadership:** Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

## **Extract from CUC Guide for Members of Higher Education Governing Bodies in the UK (2009)**

### **Personal Liability**

The law relating to the personal liabilities of members of governing bodies is complex and its interpretation is, of course, ultimately a matter for the courts. This guide does not therefore attempt a statement of the law, but offers general guidance on conduct, to avoid actions which could involve a personal liability. Members of governing bodies should satisfy themselves that they understand their own position in their particular institution, and should:

- act honestly, diligently and in good faith
- be satisfied that a course of action proposed is in accordance with the institution's statutes or instruments and articles of government
- not bind the institution to a course of action which it cannot carry out
- seek to ensure that the institution does not continue to operate if it is insolvent
- seek to persuade colleagues by open debate, and register dissent if they are concerned that the action would be contrary to any of the above.
- avoid putting themselves in a situation where there is actual or potential conflict between their interests and those of the institution.

If this advice is followed it is unlikely that personal liability could arise, particularly since the powers and responsibilities of governing bodies are exercised in a collective manner and decisions are made by formal resolution. Moreover, the higher education institution is a separate legal entity, distinct from its members or officers. However, claims may be made in relation to the collective decisions and actions of the governing body. The Funding Councils have drawn the attention of governing bodies to the desirability of taking out insurance against the costs of any claims of negligence that may be made against members of the governing body in carrying out their duties. Institutions have been given details of brokers who offer appropriate schemes.