



Member of Council Role Description

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 website 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, and 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). We hope that you find this guidance helpful. 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 feel free to contact the Council Secretary Wendy Appleby (w.appleby@ucl.ac.uk).

1. UCL Council and your role

- 1.1. UCL was established and is governed by a Royal Charter, which grants UCL Council, as UCL's governing body, the power to manage and administer the property of UCL and to conduct its affairs. As a charity, UCL is also regulated by charity law, with the Office for Students (OfS) as its principal regulator. As a member of the Council you are therefore a charity trustee, and owe fiduciary duties and other duties to UCL (see section 2 below).
- 1.2. 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.
- 1.3. 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.
- 1.4. UCL Council includes UCL staff and student members and members from outside UCL – the external members (sometimes called lay members). The Council, through its Nominations Committee in particular, is committed to seeking to ensure that the membership of Council is gender balanced and increasingly reflects the diversity of contemporary society.

- 1.5. 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 judgment to these deliberations.
- 1.6. In addition, the qualities expected of Council members include:
- a commitment to UCL and its mission;
 - independence and objectivity;
 - 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.
- 1.7. 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.
- 1.8. As part of their initial briefing, new external 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.
- 1.9. UCL Council meets usually six times a year, in addition to an annual away day. The latter event also involves the members of the Provost's Senior Management Team. Council members are asked to make every effort to attend all these meetings. A series of lunch events for Council members hosted by UCL faculties/departments, take place on Council meeting days, as well as social time after Council meetings; these will not take place while social distancing measures are in force but will resume once measures are sufficiently relaxed. 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.
- 1.10. Certain external 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 external members of Council to serve on these and/or other UCL committees. UCL recognises that the external member's role requires a significant commitment of time – and that external members will often have demanding professional and other commitments outside UCL. It is expected nevertheless that external members will normally feel able to serve on at least one other formal UCL committee in addition to Council.
- 1.11. 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. It is essential that Council members are not disqualified from being trustees. The full list of disqualifications is listed in the starter declaration form.

- 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. 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:
- 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.
- 2.4. 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).
- 2.5. 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 which were set out by the Committee on Standards in Public Life for the benefit of individuals who serve the public in any way. A summary of these standards can be found in the Appendix to this guidance.
- 2.6. 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.
- 2.7. 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

- 2.8. 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.

- 2.9. 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
 - Trustees who receive an unauthorised payment or benefit from their charity have a duty to account for (ie repay) it. The Commission can't relieve trustees from this duty.
- 2.10. 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.
- 2.11. 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 the Appendix to this guidance.
- 2.12. 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.”
- 2.13. UCL holds a 'Directors & Officers' insurance policy with a cover of £7m (but with an exclusion for claims in North America - UCL Finance and Business Affairs advises that UCL currently has no subsidiaries or assets in North America and that, if this position were to change, UCL would make arrangements to amend the current cover arrangements to include cover in the region) which covers all members of UCL Council (external, staff and student members). 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.
- 2.14. With reference to paragraph 1.21 of the CUC guidance, UCL will ask 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. 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.

- 3.2. 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.
- 3.3. 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, or, in exceptional cases, 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.
- 3.6. Further information on identifying and managing conflicts can be found on the Charity Commission website (see the "Useful Links" below).

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 business 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. '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.

- 4.4. 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.
- 4.5. If members are in any doubt over the confidentiality or otherwise of any matter, please seek advice from the Secretary to Council.

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](#)
- [Charity Information Gateway](#)
- [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

Selflessness: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership: Holders of public office should promote and support these principles by leadership and example.

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

Personal Liability

1.19 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 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
- 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.

1.20 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.

1.21 Institutions may consider it appropriate that members sign an undertaking that they understand and accept the responsibilities they are taking on.