

**Report of an enquiry into a governance matter at the
University of Bath**

November 2017

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Executive summary

Introduction

1. This report describes the outcome of HEFCE's enquiries of the University of Bath in response to a public interest disclosure which made allegations concerning issues of governance at the university. It provides the findings and recommendations arising from our work. A description of the regulatory environment in which HEFCE operates is provided in the Annex to this report.

The public interest disclosure

2. In July 2017, HEFCE received a public interest disclosure alleging poor governance connected to the remuneration of senior staff at the University of Bath. HEFCE considered the allegations and concluded that enquiries should be made of the university, as the issues raised in the disclosure engage HEFCE's role as lead regulator for the university. HEFCE advised the university that it would waive its usual requirement for the complainant to have exhausted the university's own public interest disclosure processes. The questions raised with us as a public interest disclosure were as follows:

- a. *“Could I ask, first, that you inform me of any communications you or your officials have made, in writing or in meetings, with the senior management of the University of Bath about the £451,000 pay package for their Vice-Chancellor, and high pay for 66 other senior staff members above £100,000, in clear contravention of the guidance given to you by the Minister for Higher Education about the need for ‘restraint’ in senior staff pay in terms both of absolute amounts and annual increases? (See his parliamentary answer to me, House of Lords Hansard, 13 July 2017).*
- b. *Secondly, could I ask you to tell me what action you propose to take in respect of the University of Bath's breach of this guidance, taking account of the facts set out in my speech in the House of Lords last Thursday, 13 July 2017: <https://goo.gl/351akC>*
- c. *Thirdly, could I ask you to tell me whether you are satisfied with the conduct of the remuneration committee, and other governance bodies, of the University of Bath in the light of the remarks I made in the my speech to the House of Lords of 13 July 2017.”*

3. In response to the first question above, we have not approached the University of Bath specifically about the remuneration package of the Vice-Chancellor. To do so would have been beyond our statutory remit as laid down by Parliament under the Further and Higher Education Act 1992 and the Charities Act 2011. However, we may investigate whether there is evidence of poor governance or management relevant to our funding powers and to our duties as a charity principal regulator.

4. The second and third questions described above are the subject of this report.

5. In August 2017, after we had initiated our enquiry, the complainant raised the following supplementary concerns:
- a. *“In the first place I am concerned, following public statements made by the university about my last complaint, that HEFCE is only examining the meeting of the Court held in [23] February of this year, and the conduct of that meeting. I would have expected HEFCE’s investigation to extend further in view of my speech to the House of Lords.*
 - b. *Secondly, may I specifically raise concerns about the inadequate oversight of the university by its Board of Governors. The board held only 5 meetings last year. None lasted more than 2 hours 15 minutes and the total deliberations of the board for the entire year extended to just 9 hours and 30 minutes. I do not believe this adequate to fulfil the responsibilities laid down in statute and HEFCE’s ‘Memorandum of Assurance and Accountability.’*
 - c. *In particular, I note that the Memorandum specifically states that ‘the governing body of an HEI is collectively responsible and has responsibility which cannot be delegated for overseeing the HEI’s activities.’ Yet, in respect of the conduct of the remuneration committee, there is no evidence that the governors even discussed – let alone controlled – the activities of the committee.*
 - d. *I also note a high level of non-attendance at governors’ meetings – five non-attendees for two of the five meetings held last year, and four for two of the others.”*
6. In response to these supplementary concerns, we make the following comments:
- a. The scope of this enquiry actually covered from the outset the conduct of the Remuneration Committee and the Council’s role in overseeing its work – see also paragraph 7 below.
 - b. We do not consider the number of routine meetings of the Council of the University of Bath to be unusual or insufficient to carry out its business.
 - c. The amount of time spent by Council in carrying out its work in formal meetings in academic year 2016-17 is accurately noted as 9.5 hours, but this figure excludes the day-long annual strategy and planning meeting of the Council, and the work of its various sub-committees. We consider that the total amount of time spent by the Council of the University of Bath on its business in 2016-17 was not unusually light and there is no reason to believe that it was insufficient to carry out its business.
 - d. The Council membership comprises 26 places, of whom 15 are lay (independent) members. The quorum is nine members, at least five of whom cannot be members of university staff. We do not consider that the small number of people absent from Council meetings is particularly unusual, and there is no reason to believe that this had a material impact on the Council’s ability to carry out its work effectively.

This enquiry

7. The regulatory duties and powers of HEFCE mean that we can and will investigate governance issues connected to setting the remuneration of senior staff in the institutions we regulate, where we consider there is value in doing so, and on a case-by-case basis. This enquiry has given thorough consideration to the allegations of poor governance we have received about the University of Bath, having taken full account of the wide range of information we have received directly from the university and separately from two members of Court. The time taken to carry out this enquiry therefore reflects the detailed and multi-faceted work we have necessarily carried out.

8. We should like to thank all those who contributed to our work in carrying out this enquiry.

Conclusions and recommendations

The Court meeting of 23 February 2017

Conclusions

9. The university's handling of the motion proposed by a Court member about the conduct of the Remuneration Committee at the Court meeting of 23 February 2017 was flawed and has, in our view, resulted in damage to the reputation of the university. All Court members were permitted to vote on the motion without their eligibility to vote being clarified or established before the vote took place. Certain members of Court were, in HEFCE's view, clearly conflicted by the motion under consideration. If the members of the Remuneration Committee in office during the period to which the motion related and those senior staff directly affected by its decisions had abstained from voting, then it is almost certain that the motion would have been passed rather than defeated. If the motion had been passed, such that a formal representation had been made by Court to Council, it is possible that the action taken by Council might have been different, or swifter.

10. This situation was in turn compounded by the absence of standing orders, which should have described how Court meetings should be organised and run. We can find no justification for the absence of standing orders for Court, particularly bearing in mind the university was established in 1966, with statute 28.1 (iii) stating that Court "shall establish standing orders for regulating its own procedure".

Recommendations

Recommendation 1: Before or at the next meeting of Court, the university should respond to the view of HEFCE that the vote at the Court meeting on 23 February 2017 was both poorly handled and flawed, and that this has damaged the reputation of the university. In the interests of transparency, the university's response should be fully minuted if given at the next Court meeting or presented as a written addendum to the minutes, if given before the meeting.

Recommendation 2: The Standing Orders for Court being prepared at present for approval in February 2018 should be subject to prior consultation with Court members as planned and include sections dealing with:

- a. The declaration and handling of conflicts of interest, particularly in connection with any voting procedures.
- b. The handling of any representations that Court members wish to make to the governing body.
- c. The ability of Court to legitimately query or challenge any aspect of the annual accounts.
- d. Communications between the university and Court members, noting that these could be described either separately from or within the standing orders. This section should make clear how communications should operate between the university and Court members and through whom, such that these procedures are seen to work independently of those in place for Council or any other governance body and are conducted in a manner appropriate to the role of Court.

Recommendation 3: The university's plan to seek the views of Court members in the forthcoming review of the effectiveness of the University Council should become incorporated as standard practice for consulting with a wide range of stakeholders in all future periodic reviews of Council effectiveness.

The conduct of the Remuneration Committee

Conclusion

11. The Remuneration Committee of the university meets the basic requirements of HEFCE and Committee of University Chair's (CUC) guidance. But there is scope for much improvement in the way it operates, particularly in terms of its transparency, if the obligations of Council itself and its obligations to the wider stakeholder and public interest are to be fully discharged. We further conclude that the minutes of Remuneration Committee meetings are insufficiently informative to enable Council members fully to exercise their right to challenge and to take responsibility for decisions that have been delegated to the Committee. Clearer explanations and/or justifications for the remuneration awarded to senior staff are needed.

12. We note with disappointment that the university did not respond more proactively to the representations made about the Remuneration Committee in recent years. These representations have been made in good faith through Court, Council and directly with the Committee. While the level of senior pay was an issue in these representations, there has also been a consistent theme of seeking greater transparency in the work of the Remuneration Committee. The Remuneration Committee and Council could have considered these representations as a valuable stakeholder challenge and responded with greater attention to the underlying issues being raised.

Recommendations

Recommendation 4: The forthcoming review of the effectiveness of the Remuneration Committee should consider the recommendations in this report and the good practice guidance referred to in the Annex to this report.

Recommendation 5: Subject to timing, the forthcoming review of the effectiveness of the Remuneration Committee should consider the emerging or final findings from the CUC review of remuneration committee practice. CUC is expected to issue its interim findings in January 2018 and final guidance in April 2018. If this is not possible, the university should take account of the outcomes of the CUC's work at the next most appropriate opportunity.

Recommendation 6: The work of the university's Remuneration Committee should become much more transparent, with significantly greater explanation of its processes and decisions, both to Council and more widely. This greater transparency should be reflected in the minutes and in the annual accounts.

Recommendation 7: The university should consider how to implement the requirement in Section 7.11 of the CUC Code of Governance that the effectiveness of the committees that report to the governing body must be regularly, fully and robustly reviewed. This should be assumed to apply to all governance bodies that have a reporting relationship with Council, including the audit and finance committees, as well as the remuneration committee.

Recommendation 8: Separately from the above recommendation, the effectiveness of the university's Remuneration Committee should be routinely included in Council's own review of effectiveness and not as a one-off requirement as part of the 2017-18 review.

Recommendation 9: The university should consider whether, rather than the Chair of Council being the Chair of the Remuneration Committee, it would be better for the role to be taken by a different member of the governing body who has a more demonstrably independent relationship with the Vice-Chancellor. The chair of Council should, however, remain a member of the committee.

Recommendation 10: The university should consider if operating with just one meeting each year is sufficient for the Remuneration Committee to carry out all of its work effectively. A second meeting provides the opportunity to consider such issues as remuneration policy, setting performance measures, considering interim, reputational and other contextual issues, reviewing its own performance and so forth.

Recommendation 11: Without undermining the expertise required to carry out its work, the university should consider if the diversity of the membership of its remuneration committee meets its requirements. As part of this, consideration should be given to opening up committee membership to staff and/or student representatives (drawn from Council or elsewhere) for transparency reasons and to ensure stakeholder challenge is added to the process. Training and/or induction may be of particular value in such circumstances.

If after consideration Council decides not to change the membership of the Remuneration Committee, then it should make clear why this is felt to be inappropriate.

Recommendation 12: The university should consider if it should establish a publicly available senior staff remuneration policy, incorporating consideration of the following, as appropriate to the university's circumstances:

- a. A recognition of stakeholder (especially staff and student) interest in senior pay levels and the impact this has on the reputation of the university
- b. How independent scrutiny is brought to bear in the appraisal and pay setting process
- c. A recognition of the charitable status of the university and the need not to pay more than is necessary to secure the services of the right people
- d. A recognition of the need to recruit, motivate and retain senior staff.
- e. Adoption and publication of a Vice-Chancellor/senior staff to median pay ratio and/or a proportionate pay element, so that there is a clearer understanding of the links between senior pay and all staff pay.
- f. The use or non-use of performance pay and other benefits such as loans, cars, health insurance and accommodation.
- g. How performance is assessed, including whether the process uses objectives, targets, key performance indicators, criteria or other measures.
- h. How performance assessment differentiates between individual and university performance, and how this is linked to the long-term success of the university
- i. How any involvement with organisations associated with the university (for instance, group companies) are dealt with for pay purposes.
- j. The use of benchmarking information and the periodic use of different benchmarks to help test the appropriateness of remuneration levels.
- k. The process to be adopted in pay setting.

Recommendation 13: The University Council should consider if it might periodically benefit from professional advice on its senior staff remuneration processes and decisions from an external and independent remuneration consultant.

Summary of actions taken by the university

13. HEFCE welcomes and wishes to acknowledge the work undertaken by the university in response to the issues arising at the Court meeting of 23 February 2017 and subsequently. This includes:

- a. The Chair of Council reporting to Council immediately after the Court meeting that the work of the Remuneration Committee will be included in the effectiveness review of Council due to start later in the year. This commitment is now in place. The review is being commissioned from an independent third party.
- b. Court members will be invited to contribute to the review of effectiveness.
- c. Draft standing orders for Court are currently being prepared.
- d. The process for communications between Court members and the university is being clarified.
- e. The Vice-Chancellor's recent request to no longer be a member of the Remuneration Committee has been agreed by Council.
- f. The minutes of the Remuneration Committee will be considered by Council under open business rather than reserved business in future.
- g. The quorum of the Remuneration Committee has been increased from two to three members.

This report

14. This report has been prepared for the Accounting Officer, Audit Committee and Board of HEFCE and for use within the University of Bath. It was shared as a draft with the University of Bath shortly before publication to check its factual accuracy. While this report has been published, no responsibility is accepted for any reliance third parties may place upon it.

Enquiry findings

15. This section on enquiry findings is divided into three parts, comprising the two main elements to the public interest disclosure we received and a section on 'other matters'.

The University Court meeting of 23 February 2017

16. In common with many universities, the University of Bath has, as part of its governance structure, a body known as 'Court'. Court was established when the university was established by Royal Charter in 1966. The Charter states in this respect:

"There shall be a Court of the University (herein called 'the Court') which shall be the formal body representing the interests of the University's constituencies and shall have power to make representations to the Council on any matter affecting the University."

17. As a stakeholder representative body, Court is not the governing body of the University. The governing body is the clear and unambiguous role of the University Council, whose members are governors and, in that role, act as the charity trustees of the University. The terms of reference of Court are described in the Statutes of the University (Statute 15), as follows:

"The Court shall have the following functions:

15.1 To make representations pursuant to Article 4 of the Charter for the appointment of a Visitor.

15.2 After consideration of such reports or recommendations as are required by these Statutes to appoint the Chancellor and Pro-Chancellors.

15.3 To receive from the Vice-Chancellor an Annual Report on the working of the University and to receive the annual audited Statement of Accounts of the University.

15.4 On the joint recommendation of the Council and the Senate to amend, add to or repeal any Article of the Charter in accordance with Article 29 of the Charter.

15.5 To make representations to the Council on any matter affecting the University."

18. Court normally meets annually. The most recent meeting was held on 23 February 2017. At that meeting, a question was raised about the emoluments of the Vice-Chancellor and the work of the Remuneration Committee in the context of Court receiving the university's annual audited statement of accounts, these having been approved by Council on 24 November 2016. During the ensuing discussion, the Chair of Council, who is also the Chair of the Remuneration Committee, was invited by the Chair of Court to make a statement on the work of the Remuneration Committee in response to questions. In making this statement, the Chair of Council said that Council would review the role of the Remuneration Committee as part of the periodic effectiveness review of governance due to start later in 2017. This was duly reported to Council later the same day and, since February, this undertaking has become a commitment - an external

review of the effectiveness of the Remuneration Committee is being undertaken as part of a wider review of the effectiveness of governance at the university. This has recently started and will report in May 2018.

19. As described in its terms of reference, it is within Court's power to make representations to Council on any matter affecting the university and Council is obliged under the statutes to consider such representations. The discussion about the Remuneration Committee in the February 2017 meeting of Court work led to the following motion, which arose in the meeting as a consequence of the discussion:

"That Court makes representation to Council that it is concerned at the lack of transparency and accountability of the Remuneration Committee and the decisions the Remuneration Committee has made in the past year."

20. This motion was put to a vote by a show of hands, with the minutes recording 30 members voting in favour and 33 against, with two abstentions. Thus the motion was defeated. There are no official records of who voted for or against the motion and therefore we cannot independently verify the outcome of the whole vote. However, from the information we have received about the vote, we have established that some members of the Remuneration Committee and senior staff whose remuneration is determined by the Committee (including the Vice-Chancellor) voted against the motion. We have not been able to ascertain the precise number, but it seems certain that there were comfortably more than three votes against the motion from this group of Court members.

21. In the absence of a relevant procedure, and in what we have been informed was a heated debate, no direction was given at the time as to whether or not declarations of interest should have been made. We accept that the Chair of Council disclosed that he was Chair of the Remuneration Committee when speaking to Court. Beyond this, there is no evidence that any other member of Court actively declared or sought to declare an interest at that time. It is our view that Remuneration Committee members and staff whose remuneration is determined by the Committee had a declarable interest in their consideration of the motion and that this should have been taken into account in conducting the vote. If this had happened, it is our expectation the Chair of Court would have ruled that these members should abstain from voting.

22. As mentioned both above and below, at the time of the meeting, there were no procedures (whether in standing orders or otherwise) governing the assessment and treatment of conflicts of interest in place for Court. While Court, as a representative body, is very different from Council (Council is the governing body that makes major decisions for the university), the nearest benchmark for handling conflicts at the university we can identify is the standing orders for Council. Extracts of section 23 'disclosure of interest' are shown below:

- a. *“It is central to the proper conduct of University business that members of the Council and its Committees should act, and be perceived to act, impartially and not be influenced in their role by personal, social or business relationships.*
- b. *Any member who believes that he or she may have a direct or indirect personal or financial interest in any matter under discussion at a meeting of Council or of a Council Committee shall state that interest at the earliest opportunity, normally to the Chair or Secretary prior to the meeting or, if necessary, at the appropriate point during the meeting, whether or not such interests have been recorded in the Register. Such declarations shall be recorded in the minutes.*
- c. *Members declaring an interest should automatically withdraw from the meeting when the relevant business is reached unless the Chair invites them to stay. If members stay in the meeting, they may contribute to the discussion but are not entitled to vote unless the Chair indicates otherwise. A member shall not be precluded from participating in discussion of any item of business solely because he/she is an employee or student of the University; nor shall the restriction on involvement in matters of personal financial interest per se prevent any member from considering and voting on proposals to insure the Council and its members against any liabilities which it or they might incur.”*

23. The above standards adopted for handling conflicts of interest for Council members (which we suggest should be the benchmark for senior staff who are not Council members) were not applied during the Court meeting. In accepting that conflicts for Court should be viewed differently from Council, it is nevertheless HEFCE’s view that the eligibility of at least the above-described Court members to participate in this vote should have been considered and established to the satisfaction of the meeting at the time and that, if such an exercise had taken place, it is likely that certain members would have been asked to abstain from voting. If this had happened, it is almost certain that the motion would have been passed rather than defeated.

24. In summary, we conclude that members of the Remuneration Committee and the senior staff affected by its decisions should have been excluded from voting on the above motion at the Court meeting on 23 February 2017, because they had, in our view, a conflict of interest in the matter under consideration.

25. Although the Court meeting was clearly ‘heated’ at the time of the vote, we further conclude that the way in which an aspect of the Court meeting was handled demonstrated poor governance practice and was flawed. It is also our view that poor judgement was exercised in certain instances in connection with the declaration of interests. These issues have, in our view, together resulted in damage to the reputation of the university.

26. The university has passed us a copy of a written opinion which it obtained from Leading Counsel on 3 October 2017. In this opinion, Leading Counsel indicates that he does not consider that the notion of a conflict of interest has any "strict application" to members of a body such as the Court when they are exercising a power such as the power to make representations to the Council. In the view of Leading Counsel, the better approach is that members of Court should undertake their responsibilities "in good faith" and that this requirement would be met if, in circumstances such as those which arose at the 23 February 2017 meeting, relevant members of the Court (such as the members of the Remuneration Committee) disclosed their interest before speaking or voting on the motion concerned.

27. Even on Leading Counsel's own analysis, then, relevant members of the Court (such as the members of the Remuneration Committee) should have disclosed their interest before speaking or voting on the motion. There is no evidence that any member of the Court, other than the Chair of the Remuneration Committee, did so on this occasion. On the wider question of whether members of the Remuneration Committee and senior staff affected by its decisions had a conflict of interest in the matter under consideration, HEFCE's view is that they did. HEFCE notes that Leading Counsel's opinion refers to the notion of a conflict of interest having no "strict application", in his view, to the members of the Court when they are exercising a power such as the power to make representations to the Council. Whether or not this is strictly the case, HEFCE is firmly of the opinion that as a matter of good governance practice, members of the Remuneration Committee and the senior staff affected by its decisions should have regarded themselves as having a conflict of interest in the matter under consideration.

Action taken by the university

28. Since the meeting of Court on 23 February 2017, the university has taken the following action connected to the above issues:

- a. Immediately after the Court meeting, the Chair of Council reported to Council that Court had (earlier that day) been advised that the membership and processes of the Remuneration Committee would be considered in the next effectiveness review of Council due to report in 2018. Council has since implemented this in determining the scope of the effectiveness review.
- b. A commitment has recently been made to invite all Court members to contribute to the review of Council effectiveness.
- c. Draft standing orders for Court have recently been prepared and, when they are sufficiently advanced, Court members will be consulted on them. They will be submitted to the Court meeting due in February 2018 for consideration.
- d. Consideration has recently been given to clarifying and strengthening the process of how the university and Court members should communicate with each other.

HEFCE welcomes this action.

The conduct of the university's Remuneration Committee

29. The Council of the university has established a Remuneration Committee with delegated authority to determine the remuneration of the Vice-Chancellor and a named group of senior staff. The establishment of a remuneration committee for this purpose is considered essential for effective governance under the Higher Education Code of Governance issued by CUC.

30. While previous governing body effectiveness reviews have considered aspects of the role and work of the Remuneration Committee in the context of the overall governance structure, there has not previously been a specific assessment of the effectiveness of the Committee itself in detail. Section 7.11 of the CUC code states:

*"... governing bodies **must** conduct a regular, full and robust review of their effectiveness and that of their committees ...".*

Reviewing the performance of committees separately from that of the governing body applies to all committees and groups reporting to the governing body, including the audit, finance and estates committees, and the remuneration committee is no different in this respect. In this latter respect, we note that the university has not yet made a detailed assessment of the effectiveness of its own remuneration committee using the CUC Illustrative Practice Note on remuneration committees. As this guidance was published in March 2015, we would have expected the university to have undertaken an assessment against this Practice Note by now.

31. While the Remuneration Committee has been given delegated authority by Council to determine the pay of the Vice-Chancellor and certain senior staff (which is normal practice), the minutes of the Committee's meetings provide a minimal amount of information to Council about its work. This can and sometimes is supplemented by oral commentary from the Chair or discussion in Council meetings. However competent the conduct of Remuneration Committee meetings are, there is insufficient evidence in the minutes that this is so, and insufficient information or justification in the minutes to support the decisions made.

32. For any governing body, delegation of this role to a remuneration committee does not absolve the governing body of responsibility for the decisions made on its behalf, particularly where there are important reputational and other consequences that are the legitimate responsibility of Council. While receipt of the minutes (hitherto under 'reserved business') implies Council is satisfied in regard to these matters, the minutes of both the Committee and Council do not otherwise provide sufficient evidence that Council has considered these matters as thoroughly as it should. This view is supported by the dissatisfaction expressed in the Court meeting of 23 February 2017 about the work of the Committee.

33. Subject to the specific issues discussed in this report, our assessment of the work of the Remuneration Committee has also been hampered by the lack of supporting evidence in terms of outputs. While the Committee may indeed operate satisfactorily in many respects, there is insufficient evidence in the minutes to demonstrate that the

Committee meets today's standards: while we have no reason to doubt the right kind of matters are discussed, the records do not show this, and there are possibly gaps in what the Committee has considered. For example, the evidence to demonstrate that good practice is followed is weak in the following areas:

- a. The consideration of senior remuneration from a charity, value-for-money, and public and student interest perspective – including responding to the changing demands in these areas.
- b. The absence of the use of a senior staff pay policy.
- c. The consideration of some or all of the good practice guidance relevant to its work (noting that some of this is relatively recent).
- d. That the assurances provided to the Committee or Council about the nature of the work undertaken by those involved, which help to justify the outcomes, are often oral in nature and may not be fully captured in the minutes of either the Committee or Council.

34. In addition to the matter of the role of Council in this area, the work of remuneration committees and the size and nature of senior staff remuneration packages in HE institutions in general is a growing matter of public and student interest. This interest is aligned with the impact of the raised awareness about senior staff remuneration on individual institutions and the HE sector as a whole. This interest is further reinforced by the need for institutions to demonstrate accountability for and safeguard their use of public funds, seek value for money and to take account of both their charitable status and the Government's request for pay restraint in setting senior pay. The customary response from organisations wishing to provide assurance to their stakeholders in such matters, whether obliged to through mandatory requirements or not, is to significantly enhance the transparency of the work of their remuneration committees. At the university, there have been calls for greater transparency for some years, and there has been a limited response to this in the period to date. Transparency in the area of performance and remuneration of individuals is inevitably a sensitive subject, for example, where individuals have data protection-related rights.

35. There are many ways in which the transparency of remuneration committees and how governing bodies deal with this can be enhanced. These ways are increasingly seen as a requirement in the higher education sector and other public bodies. They include:

- a. Explaining more clearly and fully the processes used to determine senior staff pay.
- b. Making all or at least most of the performance objectives of senior staff available to the governing body and or the wider institution (this is separate from disclosing the actual outcome of the assessment against these objectives, which would be significantly more personal in nature and require additional consideration from a data protection perspective).

- c. Explaining more clearly and fully to Council (and beyond) the justification for the absolute value of remuneration for senior staff, including basic pay, performance pay (if used), severance pay and non-pay elements.
- d. Explaining more clearly and fully to Council (and beyond) the justification for increases or decreases in remuneration and its constituent elements.
- e. Showing recognition of the public and student interest in the work of remuneration committees.
- f. Voluntarily disclosing more information in the annual accounts and/or on institutional websites, beyond that which is necessary to meet minimum regulatory requirements.
- g. Widening (not necessarily increasing) membership of the remuneration committee and ensure it is sufficiently diverse and representative while meeting the needs of the governing body, whether from within Council or through co-option of suitably qualified independent members or possibly to allow observers to attend meetings.
- h. Adopting and publicising a senior staff pay policy that considers a variety of factors (see recommendation 12 above).
- i. As discussed above, periodically assessing the effectiveness of the remuneration committee and to publicise and respond to the outcomes.

36. Our assessment is that the university has a significant distance to travel to open the work of its remuneration committee to legitimate scrutiny through enhancing its use of various measures of transparency and in order to meet the increasing demands for this from many stakeholder groups and society at large.

37. At the time of initiating our work, the membership of the Remuneration Committee met the requirements of CUC guidance in that the Chair of the Committee was Chair of Council, there were three other independent members of Council on the Committee, and the Vice-Chancellor was a member except when her own remuneration was under consideration. This has subsequently changed in that the Vice-Chancellor has asked to withdraw from membership of the Committee and this has recently been agreed by Council. We welcome this development. We also recommend above that the university should consider whether the Chair of Council should be chair of the Remuneration Committee. The governance reasons for adopting these two practices are as follows:

- a. In acknowledging that the status of membership for part of a remuneration committee meeting is not always understood by stakeholders, there is a good governance reason for a vice-chancellor not to be a member of the committee. To do its work, the committee will usually need information from the line manager (and possibly others) of the senior officers they determine the remuneration of – this is often but not always the vice-chancellor. This information can be submitted in writing (which is healthy from an evidence perspective) and/or by the vice-chancellor attending as a non-member for the relevant part of the meeting. As non-membership gives the committee the

opportunity to discuss any matters within its remit in the absence of the vice-chancellor (who has an embedded material conflict of interest in the assessment and outcome of the decision about the pay of senior staff), this can include discussions about those staff in the absence of the vice-chancellor.

- b. The chair of the governing body has a perceived conflict of interest in the determination and assessment of the vice-chancellor's performance and remuneration in that they 'line manage' the vice-chancellor. As a result, practice in many organisations is that the chair should not be the chair of the remuneration committee – their role is to submit information to the committee for the relevant assessment and to participate as a member in all discussions. The chair's role could be taken by the equivalent of the 'senior independent director' role used in the corporate sector, such as the deputy chair, the Treasurer (or Chair of Finance Committee) or an Audit Committee member, but probably not the chair of that committee.

38. On membership, and taking into account the above comments, we make a subsidiary observation that conflicts of interest can be perceived differently when associated with the work of any committee, compared with the work of the governing body. Therefore, when making appointments to a remuneration committee (or any other committee) consideration should be given as to whether any actual or openly declared ongoing or past interest could be material from the perspective of the work of the committee even if this is not the case for other governance purposes.

Action taken by the university

39. The Council of the university has recently initiated its periodic review of the effectiveness of governance as planned, and agreed that its scope will incorporate a review of the effectiveness of the Remuneration Committee by reference to relevant good practice. The university has begun a process to commission an independent third party to carry out the review.

40. The Council of the university has recently agreed to the request from the Vice-Chancellor that she should no longer be a member of the Remuneration Committee.

41. Council has recently agreed to consider the minutes of Remuneration Committee meetings under open business rather than reserved business in future.

42. The quorum of the Remuneration Committee has recently been increased from two to three members. (Following the agreed decision of the Vice-Chancellor to no longer be a member there are now four members of the committee.)

HEFCE welcomes this action.

Other matters

Senior staff remuneration other than those dealt with by the Remuneration Committee

43. The public interest disclosure giving rise to this enquiry also noted that there were 66 staff, other than the Vice-Chancellor, whose remuneration is more than £100,000 (this is taken from the university's accounts for 2015-16). There are approximately 10 staff other than the Vice-Chancellor whose remuneration is dealt with by the Remuneration Committee, who may or may not be assumed to be among those 66. Remuneration for these purposes includes employer pension contributions, which means that:

- a. At the current University Superannuation Scheme (USS) employer contribution rate of 18 per cent, staff earning just under £85,000 or more who are members of USS will be included in these figures
- b. At the current Local Government Pension Scheme (LGPS) employer contribution rate of 14.6 per cent, staff earning just over £87,000 or more who are members of LGPS will be included in these figures

The salary level will be lower in both cases if other benefits are included in remuneration.

44. The majority of other staff within this group of 66 are academic staff whose salaries are dealt with by the Professorial Remuneration Committee. This Committee is chaired by the Vice-Chancellor and comprises other members who would be expected to be involved. The university publishes details of how the Committee works, alongside an explanation of the Professorial Salary Review process and we conclude the published process is reasonable. We have been advised that the remuneration for any other staff in the '£100,000 and above' category are dealt with through the routine pay and appraisal processes operated by the university. We have identified no reason to extend our enquiries to look in detail at how the processes for other staff whose remuneration exceeds £100,000 operate in practice.

HEFCE accounts direction

45. HEFCE publishes an accounts direction every year, which requires institutions to disclose the remuneration of the head of institution and the numbers of senior staff whose remuneration exceeds £100,000 pa. We take this opportunity to confirm that, based on the evidence considered as part of this enquiry, the University of Bath fully complies with the accounts direction in its disclosures of senior staff remuneration.

Background and context

The regulatory environment

1. In order to assist those with an interest in this matter to understand the regulatory environment surrounding the remuneration of senior staff in higher education, HEFCE published a blog post on 29 August 2017 describing its regulatory duties and powers; this blog may be found at: <http://blog.hefce.ac.uk/2017/08/29/what-is-hefces-role-in-regulating-senior-pay-in-higher-education/> . The key elements of this are described below.

Terms and conditions of grant

2. HEFCE's primary power under the Further and Higher Education Act 1992 is to attach terms and conditions to the grants we make to HE institutions. Legally, these terms and conditions must be connected to HEFCE's functions, and be proportionate and reasonable. They may not relate to the application of funds derived otherwise than from HEFCE. The terms and conditions applicable to this enquiry are described in HEFCE's Memorandum of Assurance and Accountability, the latest version of which may be found at www.hefce.ac.uk/pubs/year/2017/201708/ . The most relevant terms and conditions applicable to this enquiry concern the need for institutions to operate to good standards of governance, use public funds for proper purposes and to seek value for money from public funds. In this respect, it is worth noting that, in 2015-16, HEFCE made grants of around £35 million to the University of Bath, which comprises 13.5 per cent of its £260 million income in that year. Tuition fees from UK and EU students derived from the Student Loans Company, which comprised almost 50 per cent of the university's income in 2015-16, are classified by HM Treasury as private income in the hands of institutions, in that they are borrowed by individuals to pay for their courses. Therefore, while HEFCE seeks to act in both the public and student interest in its regulatory activities, its terms and conditions cannot be attached to the tuition fees paid by students or, indeed, to any other non-HEFCE income derived from public sources.

Power as a charity principal regulator

3. Under section 26 of the Charities Act 2011, HEFCE has the duty, as principal regulator for those HEIs which are exempt charities (that is, charities exempt from registration with the Charity Commission), to do all it reasonably can to promote compliance by governing bodies with their legal obligations in exercising control and management of the administration of the charity. The University of Bath is an exempt charity and therefore HEFCE's duty is to promote (and not to secure or enforce) compliance with charitable law by its governing body.

Legal status of institutions

4. It is important to note that institutions like the University of Bath are not public bodies, although there is wide public perception that they are. This is because of the income they receive that is derived from public funds, the public interest in what they do and because some of what they do can be classed as public functions. They are also required by law to comply with some requirements that are associated with being a public body, such as responding to Freedom of Information Act requests. Legislation and practice recognise that such institutions are private and autonomous bodies and also, as charities, that they are legally obliged to be independent of government control.

Requirements and the role of good practice in relation to senior staff remuneration

5. Taking into account its powers under both the Further and Higher Education Act 1992 and the Charities Act 2011, HEFCE is able to impose proportionate and reasonable requirements on institutions and to issue or promote the use of good practice guidance in relation to senior staff remuneration.

6. The legal position means that government, HEFCE and the Charity Commission are not legally empowered to set salary levels for vice-chancellors or other senior executive staff, or to require changes in salaries for specific employees in any institution. A fundamental change in the law would be needed for HEFCE to be able to do that. This legal position is recognised in the annual grant letter issued by our sponsoring government department (the Department for Education), the most recent of which may be found at www.hefce.ac.uk/funding/govletter/ . On senior pay, this states:

“The Government is clear that efficiency includes demonstrating restraint in senior pay and remains concerned about the substantial upwards drift of salaries of some top management. We would like to see senior leaders in the sector exercise much greater restraint.”

7. HEFCE encourages senior pay restraint through its general terms and conditions of grant, disclosure requirements (transparency) and through promoting the use of guidance relevant to the sector. The key ways we do this of relevance to this enquiry, and which we have used in carrying out our work, is as follows:

- a. HEFCE’s annual accounts direction, the latest version of which may be found at www.hefce.ac.uk/pubs/year/2017/CL_272017/ . This requires institutions to disclose the remuneration of the head of institution and the numbers of senior staff whose remuneration exceeds £100,000 pa. An equivalent requirement has been in place for more than 20 years.
- b. HEFCE’s circular letter 17/2017 “Guidance on severance pay and the remuneration of senior staff”, dated 15 June 2017. This may be found at www.hefce.ac.uk/pubs/year/2017/CL_172017/ . This recently issued updated guidance provides advice to remuneration committees on what they should take into account in carrying out their work.

- c. The Higher Education Code of Governance, Committee of University Chairs (CUC), December 2014, which may be found at www.universitychairs.ac.uk/publications/ . This provides guidance and advice on good governance in higher education, including for the work of remuneration committees.
 - d. CUC Illustrative Practice Note 1 on Remuneration Committees, March 2015, which may be found at www.universitychairs.ac.uk/publications/ . This provides more detailed advice and guidance on the work of remuneration committees.
 - e. The Good Pay Guide, Association of Chief Executives of Voluntary Organisations (ACEVO), December 2013, which may be found at and downloaded from: www.acevo.org.uk/good-pay . This guidance is targeted at charities and social enterprises more generally and is not specific to higher education;
 - f. Report of the Inquiry into Charity Senior Executive Pay and guidance for trustees on setting remuneration, National Council for Voluntary Organisations (NCVO), April 2014, which may be found at www.ncvo.org.uk/images/news/Executive-Pay-Report.pdf . While charities in higher education were not explicitly within the scope of the NCVO's work, this report provides useful additional advice on senior remuneration matters.
8. HEFCE has previously indicated it will follow-up its June 2017 guidance (item 'b' in the list above) after the next cycle of remuneration committee meetings has taken place to check whether due regard has been given to its guidance in practice. In this respect, it is worth noting that CUC has recently initiated a review of its guidance on the work of remuneration committees operating in higher education institutions. This CUC review is expected to report on the outcomes of its work in spring 2018. We hope and anticipate that this report will inform the work of CUC.