

Process for Appointment of Chair of the Board of Governors

POLICY DETAILS:

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Process for appointment of the Chair of the Board of Governors

1. Background

- 1.1 The Higher Education Governance (Scotland) Act 2016 ('the Act') requires that the governing body of a higher education institution must include a senior lay (independent) member, who must be appointed in accordance with a process prescribed by the Act. The School previously adopted revised Articles of Association (2020) and an updated Order of Council 2020 ('Order') which include provision for the appointment of members of the School's Board of Governors in accordance with the Act.
- 1.2 Higher education institutions can use their own terminology for the role of senior independent member. The School has adopted the term Chair of the Board of Governors or 'Chair'. Where the term 'Chair' is used in these rules, this means the senior independent member in terms of the Act. This terminology is also reflected in the School's updated Articles.
- 1.3 The relevant provisions of the Act are reflected in Article 4 of the School's Order, which provides that the Chair is to be appointed in accordance with sections 3 to 8 of the Act and an appointment process prescribed by the Board of Governors.
- 1.4 Section 3(5) of the Act states that rules made by the governing body of the institution may contain provision about the process for filling the position of senior independent member of the governing body. Accordingly, this process document sets out the provisions that apply in addition to those contained in the Articles, the Order and the Act.

2. Appointing Committee Oversight

- 2.1 Section 3 of the Act requires that whenever a vacancy arises for the position of senior independent member of the governing body, the Board must delegate to a committee the responsibility of devising the relevant criteria with respect to the position of Chair and ensuring the efficiency and fairness of the appointment process. The Board will form an appointing committee of the Board of Governors ('the Committee') to perform this role on each occasion on which a vacancy of Chair arises.
- 2.2 A Vice-Chair of the Board of Governors will normally convene the Committee. All potential committee members, including the convenor, must confirm they do not intend to apply for the role of Chair, as this would exclude them from membership of the appointing committee. Should the Vice-Chair/s wish to apply for the role of Chair, an alternative convenor will be selected. The Committee will normally comprise **seven** members. It must include the **Director and Principal**, at least one GSA student and at least one member of GSA staff. The sitting Chair of the Board of Governors will not be a permitted Committee member. In addition to the Committee convenor, at least **three** appointing committee members should be independent governors.
- 2.3 The Committee will devise the criteria to be met by applicants for the position and will oversee the appointment process to ensure its fairness and efficiency. The criteria for the position must be in accordance with the requirements set out in section 3(2) of the Act, together with such additional criteria as the Committee may consider appropriate in relation to the vacancy. The criteria referred to in section 3(2) of the Act include the availability, skills and knowledge considered by the Committee to be necessary or desirable to exercise the functions of the Chair, and to command the trust and respect of the Board of Governors, the Academic Council and of the staff and students.

- 2.4 The Committee shall have authority to decide whether it considers it beneficial to engage an executive search or recruitment agency to assist with the appointment process. Should the Committee choose to appoint an agency, the agency will be charged with providing assurance on the undernoted probity checks, some of which may be self-certified and others which may require independent verification.

3. Eligibility for Appointment as Chair

3.1 Eligibility rules

- 3.1.1 Current GSA students or members of staff are not eligible to stand for the position of Chair. For determining eligibility, status as a current student or member of staff shall be determined in accordance with paragraph 6.2 below, provided that the relevant date for assessing such status shall be the date of publication of the first advertisement of the position.
- 3.1.2 To be eligible to be considered for the role of Chair, current or previous members of the Board of Governors must have a minimum period of four years for which they will remain eligible to hold office as a member of the Board of Governors (considering the maximum aggregate period of office of 9 years specified in Article 8(8) of the Order).
- 3.1.3 Any former student of the School who has been excluded by the School and any former member of staff of the School who has been dismissed by the School is not eligible to stand for the position of Chair, where such exclusion or dismissal occurred within a period of 4 years prior to the date of publication of the first advertisement of the position.
- 3.1.4 Anyone who has previously been disqualified or dismissed from membership of a Board or public position is not eligible to stand for the position of Chair.
- 3.1.5 Any applicant who is disqualified by law from holding office as a director or charity trustee (including but not limited to under the Companies Act 2006, Company Directors Disqualification Act 1986, or Charities and Trustee Investment (Scotland) Act 2005) will not be eligible to stand for the position of Chair.

3.2 Other conditions

- 3.2.1 Applicants will be asked to confirm that they are not disqualified in any way from fulfilling the statutory, regulatory or other operational requirements of the role.
- 3.2.2 Applicants must not have any unspent or pending criminal convictions that may have an impact on their ability to fulfil the requirements of the role.

Applicants will be asked to declare any unspent or pending criminal convictions at the time of application so that the School can consider if it can effectively manage the risks associated with the conviction if the applicant declaring a conviction were successful. This includes any unspent conviction for an offence involving dishonesty or an offence under the Charities and Trustee Investment (Scotland) Act 2005.

- 3.2.3 Applicants must declare any current or previous involvement in activities, organisations and/or financial affairs (including personal/professional bankruptcy proceedings) which may have, or in the reasonable opinion of the Committee have the potential to have, an adverse impact upon the School's reputation.

- 3.2.4 Applicants will be invited to reflect on, and confirm to the reasonable satisfaction of the Committee, that they have no potential recurring or unmanageable conflicts of interest in respect of their possible appointment to the position of Chair. In particular, applicants will be asked to consider whether any other role or office they hold may present a situational conflict which may arise on a regular or repeating basis. (That is, a conflict which arises from an ongoing situation or set of circumstances, rather than in relation to a specific transaction or item of business.)

4. Application / Selection Process

- 4.1 Section 4 of the Act requires the vacancy in the role of Chair to be advertised widely by the governing body, in a manner suitable for attracting a broad range of candidates. The Committee is to ensure that the advertisement complies with section 4(2) of the Act.
- 4.2 The Committee will be responsible for devising an application form for submission by interested applicants, and for setting the deadline for applications. The information provided by applicants on this form will enable the Committee to make an initial assessment of whether applicants meet the criteria devised by the Committee pursuant to paragraph 2.3 above.
- 4.3 All applicants whose applications appear to the Committee (at its absolute discretion) to fulfil the advertised criteria will be offered an interview, to be undertaken by the Committee.
- 4.4 It will be for the Committee (at its absolute discretion) to decide whether each interviewee demonstrates that they meet the criteria for the role of Chair and are, therefore, entitled to stand as a candidate in an election for the position. (The election process is set out from point 5 below.)
- 4.5 The validity of the selection of suitable candidates to stand for election to the position of Chair of the Board of Governors shall not be affected by any defect in the procedure in the application and selection process carried out by the Committee, except where subject to any complaint validly made and upheld in terms of this paragraph 4.5 and paragraphs 4.6 and 4.7 below.

Any applicant or interviewee who is dissatisfied with the application or selection process undertaken by the Committee shall be entitled to raise a complaint about the process by submission in writing to the Secretary and Registrar, provided that such complaint is submitted:

- (i) in the case of a complaint by an applicant following the application stage, within 3 working days of notification of the outcome of that application; and
- (ii) in the case of a complaint by an interviewee following the interview stage, within 3 working days of notification of the outcome of that interview;

in each case setting out in reasonable detail the grounds on which the applicant or interviewee considers the process has been operated unfairly or otherwise than in accordance with these rules. Complaints will only be considered on the grounds of unfairness or breach of these rules.

- 4.6 Upon receipt of any complaint in accordance with the terms of paragraph 4.5 above, the Secretary and Registrar and Convenor of the Committee shall consider the complaint in the first instance, as soon as possible. If the Secretary and Registrar and Convenor of the Committee:
- (i) **uphold the complaint:** they will notify the complainant of the outcome of their complaint, within 3 working days of their decision, and will make such arrangements as the Committee considers reasonable and proportionate to remedy and/or to provide redress for the unfairness or infringement of these rules;
 - (ii) **dismiss the complaint:** they shall notify the complainant in writing within 3 working days of their decision, giving clear reasons for such dismissal. Subsequently, the complainant shall have 3 working days from the date of such written notification to appeal against the dismissal.
- 4.7 In the circumstances of 4.6 (i) or (ii), any appeal against the outcome of the complaint will be considered by a separate panel of 3 persons, formed from the existing membership of the Board of Governors, solely for the purpose of considering the appeal. This separate panel will include at least two independent governors, not including any on the appointing committee. The appeal panel will consider the matter as soon as practicable, taking evidence from the complainant and/or appointing committee (or any of its members) as the panel considers appropriate. The panel's determination on the appeal will be final and will be communicated in writing to the complainant and any other affected party within 2 working days.

5. Election Process

- 5.1 Following identification of a minimum of two suitable applicants for the role of Chair, the Board of Governors will instruct the School to organise an election to determine which of the suitable applicants is to be appointed.
- 5.2 When notifying those applicants identified as suitable for the role of their eligibility to stand for election as Chair, the School will specify in writing the period during which election campaigning may be undertaken and of the rules applicable to election campaigning. No campaigning activity may be undertaken by Candidates outside of this period.
- 5.3 The Committee will appoint a Returning Officer, which will ordinarily be the Secretary and Registrar (or their nominated deputy, such as the Head of Corporate Governance). By exception, the Returning Officer may be another individual employed or engaged by the School and appointed by the Committee to carry out the role of Returning Officer.
- 5.4 The Committee's responsibilities shall include (but not be limited to) the following:
- fixing the date(s) of the election, acknowledging that voting may take place over more than one day;
 - fixing a campaigning expenses limit (within parameters determined by the Board of Governors in accordance with section 6(3) of the Act) for each participating candidate;
 - ensuring the proper announcement of candidates and publication of election statements by candidates;
 - reviewing election statements of candidates to ensure they meet the campaign rules;
 - approval of the adoption of any electronic or online based system of voting;
 - ensuring suitable publicity of the election among the electorate;

- appointment of any third party (as appropriate) monitor or observer to assist with or facilitate the election process;
 - identifying an appropriate qualifying date for the determination of those eligible to vote in the election in accordance with paragraph 6.2 below.
- 5.5 The Returning Officer will be responsible for managing the electoral process on behalf of and under the direction of the Committee, including being satisfied as to the matters detailed in paragraph 5.4 above. Additionally, the Returning Officer will be responsible for, including but not limited to, the following:
- monitoring turnout figures;
 - ensuring the proper application of the election rules;
 - ensuring candidates are reimbursed for any expenses permitted;
 - receiving any complaints raised in relation to the conduct of the campaign and the election itself.
- 5.6 Each member of the electorate has a single vote, and each vote cast in the election carries equal weight.
- 5.7 The election is won by the candidate who secures a simple majority of the total number of votes cast, such that the election is won by the candidate who secures the highest number of votes.
- 5.8 In the event of an equal number of votes being cast for the two or more candidates with the highest number of votes, the winner shall be determined by the drawing of lots.
- 5.9 The validity of any election shall not be affected by any defect in the procedure in carrying out such an election or infringement of these rules unless:
- (i) the alleged procedural defect is notified in writing by a candidate to the Returning Officer, within 5 working days after the announcement of the election result; or
 - (ii) at the instigation of the Returning Officer, within the three-month period after the announcement of the election result, where they become aware of such a potential defect in the procedure or any potential infringement of these rules, and after due enquiry and reference to the Committee, the Committee considers that a defect or infringement has had or could potentially have had an adverse impact on a fair and free election.

In those circumstances the Committee will make such arrangements and/or apply such sanctions as the Committee considers reasonable and proportionate to remedy and/or to provide redress for the harm caused by the procedural defect or infringement of these rules. Such arrangements and sanctions may include but are not limited to:

- permitting some or all candidates to provide additional materials to the electorate;
- pausing or suspending the election,
- extending the election period,
- rescheduling the election,
- rejecting campaign expense claims;
- disqualifying candidates;
- declaring the election result to be invalid; and/or
- ordering the election to be re-run

Any appeal against the decision of the Committee will be considered by a separate panel as set out within 4.7 to consider the matter, whose determination on the appeal will be final. Such appeals must be submitted in writing to a Vice-Chair of the Board of Governors within 3 working days of the Committee's decision being communicated in writing to those affected. Appeals will only be considered on the grounds of procedure or prejudice to a fair and free election.

6. Electorate

6.1 Section 7 of the Act requires that the electorate for the election of the Chair must include all members of the School's Board of Governors, all members of staff of the School, and all students of the School. Each individual can cast only one vote, even if they are a member of more than one category.

6.2 For the purposes of paragraph 6.1:

- a) members of staff shall be determined by reference to the School's employee records on a date not more than 4 weeks prior to the opening of voting in the election, and includes all staff employed by the School as evidenced by a permanent or fixed term employment contract.
- b) students shall be determined by reference to the School's Registry student records on a date not more than 4 weeks prior to the opening of voting in the election and shall include all fully enrolled students of the School, studying on a credit bearing programme (irrespective of their location of study) and includes any sabbatical officer (in accordance with section 22 of the Act).

7. Campaigning

7.1 The Committee will have delegated authority to develop, publish and monitor adherence to rules applicable to campaigning by candidates in the election process.

8. Term of Office

8.1 Subject to the provisions of the Articles and the Order, the Chair will hold office for a period of four years, and may be re-appointed for a further consecutive period of up to four years by a resolution of the Board of Governors, following recommendation to reappointment by the Governance and Nominations Committee (under exclusion of the Chair, who ordinarily sits on the Governance and Nominations Committee).

8.2 Where an individual is appointed to role of Chair having previously served as a member of the Board of Governors:

- a) the nine-year aggregate limit on the period of appointment provided for in Article 8(8) of the Order will remain applicable; and
- b) any reappointment of the Chair following an initial term of four years shall be limited accordingly.

9. Remuneration & Appointment Conditions

- 9.1 The Chair shall be appointed according to the standard letter of appointment applicable to Governors, subject to paragraph 9.2 below in respect of remuneration.
- 9.2 On appointment, the Chair may request the payment of such remuneration as the Board of Governors has previously agreed and as set out in the advertised particulars for the role. The applicable rate will be stated in the Chair's letter of appointment.
- 9.3 The Board has determined that the Chair shall be remunerated based on an annual sum (pro-rated where applicable), calculated based on an expected annual time commitment of at least fifty days. Such sum shall be paid monthly in arrears within an agreed annual payment period. The Chair shall not be required to record days or time spent on the role. Any payment is only made upon confirmation by the Secretary and Registrar and this remuneration model shall apply until further resolution by the Board of Governors.

10. Reporting

Following completion of the appointment of the Chair according to this process, the Committee will produce and make publicly available a report in accordance with and including the information prescribed by section 3(3) of the Act. It would ordinarily be expected that report will be produced within 3 months of the appointment of a Chair.