

HE Briefing Note

Shouldering the responsibility for regulatory compliance: a challenge for higher education governance

February 2023

1. Executive summary

It's been almost five years since the first English universities were approved for inclusion in the Office for Students' (OfS') register of providers. The register now lists over 400 providers, all of whom are subject to regulation by the OfS' and who need to demonstrate compliance with a set of 24 "ongoing conditions of registration" and the OfS' accounts direction.

The guidance is clear that ultimately it is the governing body of a university who is responsible for ensuring that the institution continues to satisfy these conditions. The challenge for councils and boards therefore is how do they obtain the assurance they need to be confident that conditions are being met in practice as well as on paper?

Uniac has reviewed how a range of governing bodies have gone about obtaining assurance, drawing upon our insight from our members and clients and published information on governance frameworks. This briefing describes common approaches and highlights good practice covering:

- gaining assurance through existing governance frameworks (including the use of compliance and assurance maps)
- the changing role of the Audit Committee
- an additional Council or Board sub-committee.

Irrespective of the different approaches taken by institutions, we've identified four elements which we believe are critical to success in all contexts:

Clear governance: governing bodies need to be clear themselves where and how they obtain assurance on compliance with the on-going conditions. This needs to be documented and reflected in the scheme of delegation and committee terms of reference.

Effective risk management: strategic risk registers often include a generic risk of non-compliance with the conditions¹. Given the breadth of the conditions this is likely to be of limited use and should be disaggregated to focus on specific risk areas. An academic risk register provides a valuable input to inform assurance.

Robust, accessible evidence: all institutions should have a clear map of the outputs and evidence that demonstrate compliance with each of the conditions at suitable granularity. This should enable governors to see exactly where and how compliance is evidenced and include links to published documents, committee reports, and data.

The knowledge to challenge: governors need to understand how programmes are developed, validated and reviewed, and how quality and standards are assured to challenge the adequacy of academic governance effectively. They need to be familiar with the complexity of the data that sits under strategic KPIs. Briefing on academic governance, quality assurance, and HE data should be a fundamental part of governor induction and ongoing support.

¹ <https://uniac.co.uk/blog/risk-registers-and-the-risk-environment>

2. The challenge

There are 24 conditions with multiple sub-components addressing everything from corporate and academic governance to financial sustainability and the entirety of the student experience from first engagement to graduate destinations, presenting governors with complex and often unfamiliar territory in terms of processes, data, and terminology.

Although there is now greater clarity about how the OfS' will regulate in practice with the approval of changes to the "B" conditions on quality, standards, and outcomes, the regulatory conditions will continue to evolve. On the horizon there are new conditions relating to harassment and sexual misconduct² and the OfS' signalled³ that it will review conditions relating to consumer protection and governance in the next two years.

While every governing body will have seen documentation indicating that their institution complies with each condition, demonstrating how compliance is realised in practice isn't so straightforward. Processes are not always transparent or well-integrated. Governors may be faced with a stack of reports, finding it hard to see where risks actually lie, and some governors, particularly student governors and those unfamiliar with the HE sector, may find it difficult to provide the necessary challenge and

² <https://www.officeforstudents.org.uk/news-blog-and-events/press-and-media/ofs-plans-consultation-on-new-condition-of-registration-to-tackle-harassment-and-sexual-misconduct-in-higher-education/>

scrutiny. There's a risk that too much time is spent on compliance at some governing body meetings and too little at others.

So what works? At Uniac we've examined the ways in which governing bodies seek to gain the assurance they need across all the conditions of registration. It's clear that a variety of different approaches have been adopted as the regulatory framework becomes more familiar and embedded. In the sections below we describe our high-level observations about what works and actions that institutions may wish to consider.

3. Gaining assurance through existing governance

Our research of a mixture of Russell Group, Post-92 and small specialist universities shows that most institutions use their existing governance frameworks to obtain assurance on compliance with the OfS' conditions, i.e., their senate or academic board provides assurance on academic governance and quality and standards, while the finance committee scrutinises the financial accounts and five-year forecasts, and the audit, or audit and risk committee, brings the whole suite of activity together, providing assurance on the compliance process.

This approach makes the most effective use of existing governance structures and processes, mainstreaming the management of regulatory compliance alongside the institution's other regulatory, compliance and

³ <https://www.officeforstudents.org.uk/publications/office-for-students-strategy-2022-to-2025/>

risk management activities. However, as compliance activities evolve, we also observe an enhanced role for the audit committee (section 4) and some institutions setting up additional governing body sub-committees (section 5).

The requirement in the conditions that the governing body must “test assurance that academic governance is adequate and effective” has been a source of much debate and this is reflected in the diversity of practice observed. We note that an annual academic assurance report from the senate or academic board has become the norm, and in many cases the governing body also receives the minutes and/or an annual report from the senate or academic board. We note that a joint meeting annually between the governing body and the senate or academic board to facilitate a nuanced discussion of academic governance is becoming increasingly common. This may be more effective than what is often a limited consideration of annual reports or sight of senate or academic board minutes.

Some institutions have identified independent governors to observe senate or academic board meetings, or to lead on academic issues. While this may be beneficial for the individual, it is harder to demonstrate how effective this is in providing assurance around compliance.

4. Compliance and assurance maps

Alongside reports and papers on individual or groups of conditions, the majority of governing bodies and their audit committees consider an annual report on ongoing compliance with the OfS’ conditions of registration. These reports map out each of the conditions, who is responsible for them, and to varying degrees of detail, how the institution meets the condition and how it evidences this.

A small number of institutions have taken this further with the development of assurance maps. Assurance mapping can help to provide governing bodies and their committees with a simple overview of where and how assurance is secured across multiple activities (e.g., internal controls, governance and internal reviews, internal and external audit, and external reviews). While RAG compliance with individual conditions is of little value, RAG rating the strength of assurance in place can be a useful way of helping to explore the relationships between risk management and assurance and identify areas for additional scrutiny.

The OfS’ has written about the bureaucracy associated with demonstrating compliance, observing that placing reliance on compliance or assurance maps provides a false sense of security⁴. However, if it is effectively designed and implemented as part of an integrated approach to governance, a compliance or assurance map is a useful tool for senior managers and governors. To maximise its value – and indeed to scrutinise the evidence and challenge institutional leadership effectively - independent and student governors are likely to

⁴ <https://wonkhe.com/blogs/reducing-burden-makes-for-good-governance/>

need briefing and support to understand the regulatory framework, key datasets, academic governance, and how assurance is provided.

5. The changing role of the audit committee

As set out in CUC guidance, the role of the audit committee is “to advise and assist the governing body in respect of the entire assurance and control environment of the HE provider.”⁵ In response to the demands of the conditions of registration, audit committees are becoming more proactive in providing assurance to the governing body on compliance in relation to: individual conditions of registration; academic governance; and overall compliance with the conditions.

In doing so, they are increasingly drawing upon reports from internal committees and working groups, including data and insight on the performance of the institution, and the findings from internal audits and external reviews. For example, most audit committees consider the annual report on quality assurance from the senate or academic board before it goes to the governing body and may hold a specific meeting to consider academic governance assurance. In order to fulfil their responsibilities, audit committee members, including co-opted members, will need to be confident in their understanding of academic governance and process alongside core datasets.

⁵ <https://www.universitychairs.ac.uk/wp-content/uploads/2020/05/CUC-HE-Audit-Committees-Code-of-Practice-doc-FINAL-260520.pdf>

Ensuring that there is alignment between the consideration of the annual report on OfS’ compliance, the annual report and accounts, annual reports / opinions from the internal and external auditors, and a review of strategic risks is a helpful way to enable the audit committee to take a rounded view of assurance activities in its own annual report to the governing body.

We note too, the increasing use of academic risk registers by senate and academic board sub-committees and would encourage their use to inform the wider picture of strategic risk, and the provision of assurance around academic governance.

6. An additional council or board sub-committee

A number of primarily large, post-92 universities have introduced a new council or board sub-committee (or expanded the terms of reference of an existing sub-committee) to provide independent advice and assurance to the governing body on the academic conditions.

Having an additional sub-committee has a number of benefits. It provides the time and space to enable more detailed scrutiny of academic governance by a sub-set of independent governors, and enables the involvement of external, co-opted experts. In doing so, it enables a sub-set of governors to develop their own knowledge of academic governance and practice, and by providing assurance to the

governing body (and audit committee), frees up time at governing body meetings. However, this should be weighed against risks to the relationship between the governing body and the senate or academic board, and the time and resources involved in running and servicing an additional sub-committee. To mitigate relationship risks, some institutions include members of their senate or academic board on their sub-committee.

However, having a separate sub-committee doesn't negate the audit committee's responsibilities for reviewing the effectiveness of an institution's entire risk management, control, and governance arrangements. As outlined above, the audit committee still needs to scrutinise and provide assurance to the governing body on academic governance. Where different sub-committees are considering the same issue from different perspectives it is important that respective responsibilities are clearly defined within terms of reference.

We can help

We're happy to discuss the content of the report with you and we can support with the design of compliance and assurance maps, advice on academic risk management, and briefings for governing body and committee members. In addition, we use the ongoing conditions as one of the drivers for the development of our internal audit programme and provide an assurance assessment on each of the conditions in our annual report – thus ensuring we are supporting the audit committee with their broader assurance responsibilities.



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