

Part 4 Consultation Exercise

The preceding sections of this Report formed the basis of a consultation exercise which took place in April 2015. Meetings took place with a wide range of interested parties from each of the eight Hong Kong UGC-funded institutions and an indicative list of the categories of participants is set out in Appendix 5. Meetings also took place with staff and student representatives and with officials from the EDB. In total 98 individuals participated.

Respondents were invited to comment on the analysis presented in a discussion paper – a modified version of which constitutes Parts 2 and 3 of this Report. They were asked to consider the selection of key themes and any other issues relating to university governance, including any omissions from the initial analysis. The conversations were undertaken on a non-attributable basis.

There was clear consensus that the study was both appropriate and timely. There was an acceptance that public confidence in the UGC-funded institutions would be strengthened by a self-critical review of current governance arrangements, leading to proposals which took as their point of departure the consideration of best practice elsewhere. The fundamental point that robust governance strengthened university autonomy was widely accepted. In the light of recent political history in Hong Kong, a sensitive and implementable review was to be welcomed. There was a clear understanding that a balance needed to be struck between institutional autonomy and public accountability and that this lay at the heart of both present and future governance arrangements.

After the first draft of this discussion paper was considered by the UGC in January 2015, it was suggested that this study should explore the formulation of a draft code of practice. With this in mind, a copy of the Australian code of practice (UCC, 2011) was added as an appendix to the discussion paper, not in order to suggest it should be adopted wholesale in Hong Kong, but in order to illustrate the kind of document that a code of practice embodied. It also had the advantage of brevity. Therefore the desirability of a voluntary code of practice was also discussed in the meetings.

In this section, the Report therefore returns to the five themes identified in Part 3 which were included in the discussion paper. The views of stakeholders on each of these themes are summarised in this section and each section ends with an appropriate recommendation. For ease of reference, all the recommendations are consolidated in Appendix 1. The discussion on a code of practice is in Part 5.

1. Recruitment, Induction and Professional Development

There was a universal endorsement over the proposals in the discussion paper, particularly amongst council members, for a systematic approach to the induction, training and

continuing professional development of all members of councils. This was particularly strongly supported by lay members of council but was also endorsed by other stakeholders, including staff and student representatives. Given the importance of universities in the new knowledge economy, it is essential that membership of governing bodies is drawn from a wide range of individuals with the appropriate professional backgrounds and experience. New members can, moreover, draw upon a wide range of skills which can contribute to a pool of knowledge which can support research, teaching and knowledge transfer in their institutions.

Given the complexity of the modern university, it is hardly surprising that new members are often confused about their roles and responsibilities. One Council Chairman referred to new members being “fuzzy” about their role and needing to be “stimulated” to become involved. As far as induction is concerned, “An hour over lunch”, he said, “is not enough”. It was, he said, not sufficient for them just to attend meetings – there was a need for them to “immerse” themselves in the university. Another respondent, who had been on the councils of more than one university, referred to the fact that he had spent the first two years listening, the next two years asking the occasional question and only in the next two years did he feel confident to challenge any proposals that were laid before the council. Then, as his maximum period of office was six years, he had to stand down. Another lay member of council emphasised that while new members are all well-meaning and anxious to bring their previous experience to bear on the affairs of the university, most of them were “a bit lost” in the first few years.

In Hong Kong these problems are compounded by the particular way in which lay members are appointed. The Chief Executive, in his role as Chancellor of the universities, appoints a significant proportion of council members, although the exact number and proportion varies from one university to another. In addition, some universities, by virtue of their history, have reserved places for members of their founding charities or foundations. This situation contrasts with most other countries whereby councils themselves are responsible for appointing their own members, creating a nominations committee to undertake this task. Traditionally, in Hong Kong, the appointments to a university council has often been regarded as a civic honour, which means that appointments are made without a systematic consideration of the needs of the university to fill the requisite range of skills and expertise which they feel the council needs to discharge its responsibilities. In addition, there is not always a clear recognition on the part of new members of the time commitment which membership of the council will involve. Moreover, in order to maintain public confidence in the governance of universities, it is important that their governing bodies are broadly reflective of the stakeholders which have a legitimate interest in their affairs. As universities have grown in both size and complexity, so the expectations of the members of governing bodies have grown. There are therefore important potential consequences for governance if the university is unable to draw upon the range of skills it needs.

From the universities’ standpoint, the institution has little or no control over how it may meet its requirements. This places a premium on the nature of the relationship with the EDB and the Chief Executive’s Office. Typically, representations are made, though with varying degrees of success. These difficulties are also compounded by the fact that no

university maintains a readily available skills template which can form the basis of discussions with the EDB and the Chief Executive's Office.

Within the present framework there would be much merit in making some adjustments. For example, the EDB might consider organising an interview process for potential candidates which would allow potential new members to gain more understanding of their role and the expectations which would be placed upon them. There is undoubtedly a large, and increasing, time commitment which is often not clear to potential appointees until after they have taken up their membership. Since members are not remunerated, the universities are sometimes reluctant to indicate initially the extent of the role and responsibilities of new members and to organise an extensive programme of induction and training. It is, therefore, not surprising that lay members of council, almost universally, find it difficult to contribute in the early stages of their membership. Familiarisation with any complex organisation such as a university always takes time. But there is no doubt in the minds of many council members that the period when they feel it is difficult to contribute could be shortened considerably by an appropriate induction process.

In addition, it is important that all universities recognise that a proper process of induction must go well beyond the informal arrangements which currently exist in many institutions. A small minority of institutions already do this, but overall the current process of induction rarely goes beyond a meeting with the existing council chair and / or university president / vice-chancellor, together with some key documents – for example the university's latest strategic plan or annual report. Therefore not only is the process of induction lacking in consistency across universities, but it contrasts markedly with the training of non-executive directors in publicly-quoted companies in the commercial sector. Many new members of council understand this only too well, since they are often drawn from heavily-regulated professions in areas like banking, finance and the law, where such periods of induction are extensive and compulsory. They recognise that, given the importance and complexity of universities in today's world, this situation is no longer good enough.

There is an argument, however, that induction should extend beyond the familiarisation with the institution whose governing body they have joined. Governance involves not only the oversight of internal affairs, but also how the university relates to its external environment, locally and internationally. Therefore induction also needs to cover the wider context of higher education, both in Hong Kong and elsewhere. External trends are taking place in higher education which have a considerable impact upon how every institution is internally managed and organised. Members of council need to understand both how the university interacts locally with key agencies such as the UGC and the EDB, but also the wider international competitive environment which increasingly has an impact on every university's strategic objectives. Trends which are taking place elsewhere – most notably in Mainland China, but also in the rest of Asia and elsewhere in the world – are increasingly important to understand if good governance is to be sustained. International comparisons are increasingly, and rightly, used as benchmarks to assess the overall performance of individual institutions. Council members need to have a working knowledge of emerging trends in higher education elsewhere in the world which may have an impact upon their own institutions.

All of this suggests that a programme of induction needs to be presented in two parts. The first, which is primarily the responsibility of the institution, would focus on the familiarisation of new council members with the university. However, there is also the need for a broader induction which would be common across all institutions, and could be organised centrally in order to make efficient use of time and resources. This could be managed by the UGC, which would organise a one-day induction with a series of presentations covering major trends in higher education and, indeed, the role of the UGC itself. These presentations would benefit all new members of council, whether external or internal.

Two further issues were raised. The first concerned the need for refresher courses for all council members as part of their personal and professional development. There was considerable support for this, since in the fast-changing world of higher education there will be the need for occasional briefings to bring council members up to date with important emerging issues.

The second issue concerned whether or not the professional development of council members should be extended further through the formation of an association which would allow the spread of good practice across universities and, from time to time, address issues of common concern. This would be the Hong Kong equivalent of the CUC in the UK, or the UCC in Australia, or a more loosely-constituted organisation, such as the AGB in the USA. While there was some support for this, there was also a view that this might be a step too far at this point in time. There was concern that attendance at meetings might not be healthy, given the time commitments that already existed for council members in their own professional lives. Due to the relatively small size of the UGC-funded sector in Hong Kong, concerns were expressed that this might constitute a significant overhead. As a matter of practicality, therefore, it might be best to re-examine this in a few years' time once the effectiveness of new induction and training arrangements can be assessed.

Recommendation 1

Consideration should be given by institutions and the Government to the processes of training and continuing professional development of council members, so that they may discharge their duties in a more informed manner. The identification of candidates should be made with regard to a skills template which each institution should draw up and keep under review. Induction should be undertaken by both the UGC, with regard to sector-wide issues, and by each institution in respect of individual institutions.

2. Fiduciary responsibilities

The phrase “fiduciary responsibility” can be interpreted in either a broad or narrow sense. The narrow definition of “fiduciary responsibility” relates to the proper accounting of how expenditure, especially expenditure in a publicly financed sector, has been undertaken. It therefore embraces the audit function, but also a broader assurance function whereby the government (and potentially other stakeholders) can satisfy themselves that expenditure has been properly undertaken and that the institution has met the wider legal requirements of society. In Hong Kong the discharge of this narrow interpretation of “fiduciary responsibility” is handled in a robust manner. Not only does the UGC maintain oversight of the sector with regard to these issues, but each individual institution has in place arrangements to discharge its audit and value-for-money responsibilities in a robust fashion. All institutions have an audit committee with clear responsibilities, chaired by a lay member of council with appropriate professional experience in finance or accounting. Such audit committees typically report either to a finance committee, which is itself chaired by a lay member of council, or directly to the council, depending upon the scale and complexity of the institution itself. This process works well and is typically something to which council members pay considerable attention.

A broader interpretation of “fiduciary responsibilities”, however, not only embraces financial probity and integrity. It also encompasses the behaviours of governing board members and their oversight of externally-facing fiduciary issues (not least reputational risk – see 4 below), and how the relationship between the institution and the government is to be defined and transacted.

Thus, while the law is specific about fiduciary duties, in the narrow sense of this term, their application typically depends upon the sound judgement of council members, as guided by integrity, observation, experience, insight and institutional policy. But a wider interpretation of fiduciary behaviour underlines the need for council members to look to the future and to execute their duties with loyalty and commitment. They have a responsibility to ensure fidelity to mission, integrity of mission, and conservation of core values. And they must safeguard the institution’s moral compass. It is in this context that council members should not be parochial. They should address quite complex underlying issues – for example, transformational technology, internationalisation, and increasing regulation in the wider economy and society – which have enormous implications for the quality of their fiduciary stewardship. In this context, what is the responsible council member to do – and not do? An essential aspect of fiduciary behaviour is orientated towards the internal affairs of the university and the ability of council members not only to support, but also to challenge, the proposals put forward by senior management. But an equally important aspect of fiduciary responsibility is one that supports the long-term sustainability and integrity of the institution with regard to issues which are just as essential as, say, audit and which are far more subtle and complex – support of academic freedom within the law, long-term sustainability of the quality of teaching, research and outreach, and the reputation of the institution, not just within the academic world, but also in the external community. This is not an easy task.

As this Report has repeatedly emphasised, in a publicly-funded sector, such as the UGC-funded sector in Hong Kong, there is always a balance to be struck between institutional autonomy on the one hand and public accountability on the other. This balance can shift over time in accordance with changes in the external environment and there can certainly be no assumption that, whatever the current state of affairs, it represents an optimum solution to the relationship between autonomy and accountability. This is not unique to Hong Kong. In fact it is common to university systems all around the world.

In Hong Kong, however, there is no clear statement which sets out the roles and responsibilities of the universities on the one hand and the Government and its agencies (particularly the UGC) on the other. Hong Kong is far from being unique in this regard, but the absence of such a clear statement can, over time, produce a number of unintended consequences which can be detrimental to the interests of both the universities themselves and the wider public. This issue was explored in discussion with all of the council members and senior managers of the universities. The discussion was, of course, exploratory, since how to arrive at an appropriate balance between autonomy and accountability has not been systematically debated – at least not in those terms – in Hong Kong. However, in the absence of a systematic consideration of this balance, the sector is always vulnerable to a series of ad-hoc initiatives which can create further difficulties in the future. Some have argued that there is a particular risk of this in Hong Kong at the present time.

In Hong Kong this balance is promulgated through a so-called buffer body, the UGC, following historic practice in countries such as the UK and Ireland. The UGC advises the Government, either formally or informally, on higher education policies. However, its core function is to distribute public funds to the eight institutions which historically have constituted the bulk of the higher education sector. Through the way in which it distributes these funds the UGC seeks to incentivise the sector to pursue certain policy goals (for example, research excellence, teaching quality etc.), while the block grant principle represents an important bulwark of institutional autonomy so that the universities maintain an arm's-length relationship with the Government over operational matters, including most academic affairs.

From most universities' standpoint the control of a significant proportion of their income by the UGC grants the UGC very considerable power. To use the vernacular phrase, "money talks". However, the function of the UGC as a funding agency also has its limitations. Essentially its duties are discharged through eight bi-lateral relationships with the UGC-funded institutions. There is therefore, an implicit – but unstated – assumption that the institutional interests of eight separate universities adds up to a public interest for higher education in Hong Kong society as a whole. This is a very brave assumption. It also means that the UGC has only one major tool available to it to steer the sector – namely its funding formula. As a result, when important issues do emerge which require considerable policy development and implementation, the UGC has no option other than to fall back upon technical adjustments to its funding formulae in order to achieve necessary public policy goals. This in part accounts for the development of initiatives such as the requirements for the institutions to produce a strategic plan, submit ADPs, participate in the RAE, undertake periodic teaching quality audits for the UGC's Quality Assurance Council, etc. Sometimes

these kinds of processes are deemed by the universities to be overlapping and representing an unnecessary bureaucratic burden. However, from a UGC standpoint, it often sees itself as relatively powerless to intervene where it is fairly clear that the eight institutional interests do not necessarily add up to an overall public interest for Hong Kong.

Some examples of this, while important, are not overly significant in the grand scheme of things. For example, there is considerable evidence to suggest that the Hong Kong universities do not have a good record on collaboration – witness the plethora of schemes for English language tuition, each with its own separate systems of examination. Collaboration on the introduction and use of technology-led teaching, including MOOC's, is limited. Other examples are arguably more serious. Since the only significant resources available which are “free” (i.e. uncommitted) stem from the RAE, all universities engage in this process, irrespective of their mission, and as a result, all eight institutions, to a considerable degree, aspire to be excellent research-intensive institutions like Harvard or CalTech. Meanwhile the same level of financial incentives does not exist for the support of teaching excellence. It can scarcely be deemed in the public interests of Hong Kong that all of the universities strive to be world-class research-intensive institutions; and it can also scarcely be in the public interest of Hong Kong that, despite the UGC's strong and sincere commitment to mission diversity among institutions, the net outcome of these technical adjustments to funding formulae is the reverse: a convergence on the aspiration to be the same kind of university. Any attempt by the UGC to move away from addressing policy issues via funding changes is met by strong opposition from the institutions themselves, who regard any such attempt as a threat to their institutional autonomy. This is not a healthy outcome.

A very good example of this is the ADP process. The submission of triennial academic development proposals is something which consumes huge amounts of effort in the institutions themselves and generates high levels of anxiety and uncertainty. It might be noted that this of itself represents a significant governance issue. However, the reality, in terms of outcomes, however, is somewhat different. Typically the outcomes involve moving small amounts of marginal resource in the form of student numbers between one institution and another. Occasionally this may have a measurable impact on a particular institution (not least in terms of reputational status) but looking at the sector as a whole, the sector may look remarkably the same after an ADP exercise as it did before. In other words, a funding-based approach to address an important policy issue, namely the future size and shape of the higher education sector, is not altogether successful. So it is therefore not surprising that a disproportionate amount of the dynamism in higher education in Hong Kong is not in the UGC part of the sector. It is present in the rapid rise of non-UGC funded institutions – private, overseas, for-profit, sub-degree, self-financed, etc. On almost any calculation of risk, it is this part of the sector where many strategically significant risks lie. In the UGC sector meanwhile, risks – especially financial risks – are lower. But it is this part of the sector that, to many stakeholders, seems less agile, less attuned to public interest needs and less dynamic. And it cannot be emphasised too strongly that this is a governance issue. If the fiduciary responsibilities of university councils extend to the long-term financial sustainability and reputational enhancement of the university, then the governance of the sector as a whole represents a crucial pre-requisite of this.

So striking an appropriate balance between institutional autonomy and public accountability is an irreducible duty of university councils at the micro level, and of government and its agencies at the macro level. The difficulty is that, in Hong Kong, this is not written down. In some other countries it is written down. There is a document to which all parties can refer and which seeks to set out the roles and responsibilities of government, broadly defined, on the one hand and the universities on the other. Its particular form varies from country to country. Some countries, as referred to earlier in this report, set it down in a legal contract between the government and the university. This approach, however, tends to be inflexible and has very large transaction costs while the contract is being negotiated. It also permits government to penetrate deeply into the operational affairs of universities in a manner which certainly is a significant risk to institutional autonomy. On the other hand, a simple memorandum of understanding is scarcely sufficient. At the present time there are approximately HK\$22 billion of investment going into universities from the public purse, and a memorandum of understanding would be far too weak to discharge the responsibilities of public accountability. As was indicated in Part 2, some countries have sought to strike a balance somewhere between these two extremes. In England for the last two decades, the relationship between the funding council and the universities has been set out in a more formal document, now entitled “Memorandum of Assurance and Accountability between HEFCE and the Institutions”. The sub-title has, however, remained the same – “Terms and Conditions for Payment of Funding Council’s Grants to Institutions”. The nature of the document (see Appendix 2) is more or less standard across all institutions. It is not a controversial measure, and has afforded considerable institutional autonomy to British universities (see the EUA, 2012) whilst satisfying the public interest over the accountability of public funding. In other words, because such a public framework is in place, institutions are granted very considerable autonomy in a way which does not undermine the fundamental principle of public accountability.

A second, and more recent example, concerns Singapore. As indicated in Part 2, until a decade ago the Singaporean universities were directly managed by the Ministry of Education. Then, in order to improve their international competitiveness, the legal status of the universities was changed to not-for-profit companies limited by guarantee, with boards which abided by the requirements of the Companies Act. The Government gave them very considerable operational autonomy and in return, according to a mutually-agreed “accountability framework”, the universities reported annually on the expenditure of their public funds. Moreover – since this was a condition of grant – they are also under an obligation to report annually on their performance targets. These could vary between institutions and could therefore be used to promote mission diversity.

The point at issue here is not so much the details of other countries’ particular practice, but whether both the institutions and the government would benefit from the presence of an agreed document which would set out their mutual roles and responsibilities. There is, of course, a risk that the construction of such a document might shift the balance between accountability and autonomy too much in one direction or another. However, in the absence of any such document, there are, as indicated above, unintended consequences which inhibit the ability of the UGC to steer the sector towards agreed public policy goals and protect the autonomy of universities to pursue their strategic priorities and missions. It

is the accumulation of relatively ad-hoc initiatives in the absence of any such memorandum which has promoted a significant amount of mutual suspicion and distrust. In turn, this allowed the references to autonomy and public accountability to be somewhat unnecessarily polarised and dysfunctional. Good governance can suffer as a result.

On these issues opinion of the respondents were somewhat divided. There were those, some of whom had experience of such a system in other countries, who embraced it with some enthusiasm. But there were others who regarded it with some suspicion and feared that a formal memorandum would represent a considerable danger to autonomy and academic freedom, rather than the reverse. More generally, the absence of a widespread experience and understanding of working within the framework of a formal memorandum, made judgement difficult.

Nevertheless there seemed to be considerable merit in exploring this option. In Singapore the accountability framework for the universities appears not only to be widely accepted, but continues to sustain the trust of key stakeholders, especially the government, in the good governance and excellent senior management of the university sector. There is a clarity of expectations on the part of all those involved. Currently Hong Kong is arguably ill-prepared for such a development taken as a single step. It is essential that the process reinforces, rather than undermines, mutual trust. In order to achieve this, a period of debate and reflection would be required, through which unwarranted anxieties could be allayed. This Report does not, therefore, recommend the immediate adoption of a written memorandum or accountability framework. It does recommend, however, that the notion is explored seriously by the key stakeholders with a view to adopting a written framework which is attuned to the particular characteristics of the UGC-funded sector in Hong Kong.

Recommendation 2

In order to ensure that the fiduciary responsibilities of council members strike an appropriate and sustainable balance between institutional autonomy and public accountability the UGC should create a mechanism to explore, drawing upon international good practice, the establishment of a written accountability framework on which the vice-chancellor / president and the council report annually.

3. Strategic Planning

All institutions in the UGC sector produce strategic plans and these strategic plans form the basis of significant dialogue, not only with the UGC, but with other external stakeholders. They also set out, within a medium-term time frame, a statement of the priorities and objectives of the institutions. They are therefore both an important management tool and an important point of reference for the good governance of the university. While the drafting of the strategic plan and the management of a strategic planning process is a matter for the senior management of the university, all members of council need to feel a

sense of ownership of the plan since it acts as a necessary reference point when it comes to making decisions on particular university policies and initiatives.

All members of university councils who participated in the discussion, confirmed that the strategic plan was approved by the council as the culmination of the production process. The extent to which council members were involved in the process prior to this – and therefore the extent to which they had been made fully aware of the options and arguments in favour of any particular course of action – did, however, vary considerably. In some institutions, the enthusiasm to become involved in the strategic planning process verged on crossing the line between non-executive and executive responsibility; in others, council members seemed largely unaware of that process until they were asked at the end formally to approve the adoption of the draft plan. Some of this variability relates back to the uncertainties attendant upon the appointments process. New members, in particular, might have felt they lacked the knowledge, experience, and even aptitude, to make a significant contribution. There is no single way of engaging in strategic planning and different universities, with different characteristics, legitimately adopt a different approach. However, this does suggest that the nature and importance of strategic planning should feature significantly in the induction and professional development of council members – both internal and external.

Those who do engage in, and are enthusiastic about, strategic planning frequently offered a similar critique. They may or may not be dissatisfied with the process of producing a strategic plan, but almost universally they were unhappy about how objectives set out in the plan were monitored and how council was able to exercise some kind of strategic overview of the progress which was being made towards agreed strategic objectives. This, in turn, related to what most council members perceived as a weakness in their own institutions – namely the absence of key performance indicators against which they could measure success or otherwise. This in turn stemmed from an underdeveloped system of performance management in the universities and a widespread belief that performance management was weak, particularly at faculty and departmental level. This is a rather sensitive issue and another example of how hard information relevant to the balance between institutional autonomy and public accountability is largely absent. There is no demand for detailed key performance indicators at the operational level to be considered by university councils. However, there is a considerable demand for more meaningful and timely information about performance against a small number of key strategic objectives to be regularly reviewed by council.

Universities, and indeed other organisations, which operate this system usually do so through some form of cascade with a relatively small number of key performance indicators reflecting the key strategic objectives set out in the plan, being regularly reported to and reviewed by council, while other more detailed indicators which derive from these form a much larger body of key performance indicators appropriate to faculty and departmental levels. Key performance indicators can be both quantitative and qualitative and their selection and, of course, definition need to be considered with considerable care. It is important that they do not create unintended or even perverse consequences for behaviour across the university and it is important that council members, often drawing upon their

experience elsewhere, satisfy themselves that the performance indicators have been framed in the right way, yet do not lead to micromanagement.

It is also important to emphasise that really talented prospective council members will not be attracted on to university councils unless they can be reassured that they have a meaningful role. It is not just about time commitment, it is also about putting their time to productive use. Today's council members need to work hard to keep up to date, to read and understand the challenges facing their institution, including key strategic risks (see next section). In that context, carefully defined performance indicators are a diagnostic for them to fulfil their role. But they are diagnostics and they are indicators. There is therefore plenty of room for interpretation but, used properly, they should allow council members who ask the right questions even if performance indicators do not always provide the right answers.

So good governance involves a nexus which runs from involvement in and ownership of the strategic plan with its attendant key priorities; then the ownership of a measurable set of indicators which can assure the governing body that progress has been made toward the fulfilment of the strategic plan; and finally these indicators provide the basis of a robust reporting back mechanism from the senior management which minimises the risk of micromanagement on behalf of council itself. The construction of these indicators can be a difficult and fraught process. However, there are plenty of examples around the world where universities embrace such a system and there will be no necessity to define these from scratch (for an illustration of this see Appendix 6). However, each university is different. There is no benefit to be gained from simply acquiring another set of performance indicators from another institution and applying them wholesale internally. Nevertheless, this is one area where good practice abounds, and where the development of this kind of approach to strategic planning and performance management is underdeveloped in Hong Kong.

Recommendation 3

Council has a vital role in strategic planning, the latter seen as a process which clearly sets out institutional priorities and forms the basis of the council's assessment of institutional performance. In order to discharge this role each university should draw up a set of key performance indicators which are timely and relevant and which allow council to assess the progress towards the priorities agreed in the strategic plan.

4. Risk Management

As noted above, many lay members of council in Hong Kong are drawn from professional backgrounds where a risk-based approach to major decisions is second nature. They remain somewhat surprised that the management of risk is somewhat underdeveloped in the university sector. In today's fast-moving world of higher education, the management of risk – both financial and reputational – requires considerable thought and oversight.

It is not, of course, the duty of a council to manage risk. It is, rather, the duty of council to ensure that identifiable strategic risks are being properly managed. The actual management of risk is a matter for senior management. This is one area where lay members of council understand the issues rather well. However, the approach to strategic risk management amongst senior managers appears to be somewhat ad hoc and even rudimentary. This particularly applies to medium and lower level managers such as deans and heads of department. There is a clear training need here.

As a result, there is no widely deployed risk management system across the sector. Not only are there no risk registers at the institutional level, but little awareness of the importance of risk assessment when it comes to identifying and mitigating risk. There does, however, appear to be an increasing interest amongst senior managers in these issues, in part fuelled by recent events in Hong Kong which have demonstrated the importance of mitigation strategies. Emerging processes in higher education have also heightened an awareness of risk – for example strategies on internationalisation, knowledge transfer, performance in rankings, etc. The inability to identify, manage and mitigate key risks can have a very rapid impact upon institutional reputation, and this in turn, has an immediate effect upon students and alumni, as well as the management and staff of the institution. A university whose reputation is in precipitous decline will find itself in a situation in which students and alumni have a qualification which is perceived to be less worthwhile than they were led to believe. Institutional reputation is hard won but easily lost. Yet it represents a crucial currency in which universities trade.

Although it might seem nebulous, university councils have an irreducible responsibility, a duty of care, to oversee not only the long-term financial sustainability, but also the institutional reputation of the university. This duty cannot be delegated. A council therefore needs to reassure itself that due diligence has been undertaken in support of initiatives that might carry financial and / or reputational risk. Although it is not literally true in law in Hong Kong, members of university councils are in a very real sense trustees of the institution. They must exercise a duty of care for the institution as a whole and whilst being cognisant of key strategic risks they must also balance this with a recognition that universities must not become unnecessarily risk averse. This, too, is not an easy task.

Typically, governing bodies will require an opportunity to reflect and discuss at length the institution's risk register and to agree whether there are any emergent risks which have been overlooked or, conversely, whether some strategic risks are no longer appropriate and can be omitted. They should also ensure through this process that due diligence is undertaken wherever there are major initiatives and activities which could impinge upon financial sustainability and institutional reputation. Many governing bodies do this through taking the discussion of key strategic risks to an away-day or retreat where there is the time to reflect upon existing practice, rather than deal with it in a somewhat mechanistic way on the agenda of a regular business meeting (for a helpful guide to these issues, see Abraham, 2013).

Recommendation 4

The oversight of risk management, whereby the council is satisfied that major institutional risks – both financial and reputational – have been clearly identified and are being effectively managed, is an irreducible responsibility of council. Each council should therefore draw up a risk register which is reviewed at least annually and, ideally, more frequently.

5. Scheme of Delegation

In a modern university, thanks to its scale and complexity, it is not practical to expect that all significant university business can be scrutinised in depth by the council itself. In practice, therefore, councils operate through a sub-structure of committees and sub-committees which deliberate over key areas of university activity and which make recommendation to council for council's endorsement. Earlier in this Report it was argued that there was a need to set out clearly and in writing the relationship between the government and the universities. Equally, a similar clarity of roles and responsibilities is required between council and its sub-committees. Each should have clear terms of reference, criteria of membership, and, crucially, clear mechanisms for reporting back to council under a scheme of delegation. In practice many of these committees apply due diligence to key areas of risk. Therefore these committees cannot be absolved from the responsibilities which apply to council as a whole in determining good governance in the university.

There is no evidence to suggest that these issues are not well understood in UGC-funded institutions. However, it is very easy for committees and sub-committees to proliferate in order to deal with some quite complex technical issues. Quite inadvertently, the committee structure can become a hindrance to innovation and timely action and can consume a significant quantity of resources. It is always therefore good practice to review the effectiveness of the committee structure from time to time, and this should be a regular responsibility of council itself. A regular cycle of evaluation and review helps to ensure that the structure remains fit for purpose.

In general, councils will wish to retain to themselves three irreducible duties, as set out earlier in this Part of the Report: the ownership of, and commitment to, the strategic plan, with its attendant vision, mission and priorities; their fiduciary responsibilities, both financial and non-financial; and the oversight of key strategic risks.

A risk-based approach to council oversight will quickly identify those areas of activity which require closer attention and will be a matter for council to determine which issues can safely be delegated and which ones require continuous attention in the meetings of council itself. However, it is not only committees, in the orthodox sense, which require robust oversight. Virtually all universities these days, wherever they may be located, create a wide range of vehicles – commercial companies, companies limited by guarantee, joint ventures, charitable subsidiaries, etc. – often with complex interconnections between them and

sometimes at arm's-length from the university itself. Councils will need to assure themselves that not only are these arrangements in the best interests of the university itself, but there are in place robust measures to protect the university from financial and reputational exposure (including the possibility of conflicts of interests). Simple observation of international experience indicates the areas of highest risk:

- overseas activity, including the establishment of overseas campuses and institutes;
- wholly commercial trading subsidiaries;
- the management of intellectual property rights – start-ups, franchises, licensing agreements, etc.;
- mergers and acquisitions;
- major estate developments.

There will be many others. Whatever the particular legal framework which defines their existence, council has an absolute duty to exercise effective oversight. This can partly be undertaken by appropriate representation on boards, etc., but this itself is not entirely sufficient. In order to discharge its duty effectively council will need to be involved at quite an early stage in the development of proposals and assure itself that the attendant risks are being effectively identified and managed. The creation of an arm's-length subsidiary, for example, while it can partially de-risk a project, carries with it substantial oversight challenges. There are some difficult judgements to be made here, ironically between accountability and operational autonomy, but also between fiduciary oversight and acting as shadow directors. It is therefore not sufficient for a council simply to endorse a proposal at the very end of this process. It will need, usually, to consider various options before the preferred one is developed and to have in place a set of policies with regard to subsidiary organisations which can be applied to particular cases.

Finally, there is one irreducible duty of the council, but one which occurs (relatively) infrequently: the appointment of the chief executive (vice-chancellor / president) and the monitoring of his or her performance. This is arguably the single most important task which a council undertakes. International experience suggests that the quality of leadership is an important – some might say the most important – ingredient in achieving the mission and objectives of a university. This is not only a question of recruiting the best person available, but of ensuring that the circumstances of recruitment are such that the successful candidate is bestowed with the legitimacy which, in the academic world, renders leadership all the more effective.

Typically, the council will agree not only to the job description, but also the qualities of the individual that is being sought in relation to their priorities for the future development of the university. The council will establish a search committee (or its equivalent), very often engage executive search consultants and agree the composition of a group which is broadly-based and will undertake an initial sift of candidates. The interview of short-listed applicants will require, at the very least, the involvement of the council chair and other senior council members, as well as representatives of the academic community. However, councils may wish to consider adopting a model commonly used elsewhere, namely the use of an

external advisor (not a member), usually a vice-chancellor or president of a comparable university overseas. This can be extraordinarily useful in expanding the pool of potential candidates and advising the council on international standards.

In conclusion, there is no evidence to suggest that the issues outlined in this Part of the Report are not well understood in the UGC-funded institutions. Delegation is an art rather than a science. As such it is always good practice to review the effectiveness of the committee structure – including the arm’s-length operating subsidiaries – from time to time. This should be a responsibility of council itself. A regular cycle of evaluation and review helps to ensure that the structure of governance remains fit for purpose.

Recommendation 5

Each council should publish a scheme of delegation which sets out the sub-structure of its committees and includes the mechanism whereby council is satisfied that the related managerial oversight of university activities is being effectively handled, including appropriate delegation and reporting mechanisms.