
Nominations & Remuneration Committee

Date of Meeting	Thursday 28 May 2020
Paper Title	Update on External Governance Developments
Agenda Item	12
Paper Number	NRC4-D
Responsible Officer	Penny Davis, Board Secretary
Status	Disclosable
Action	For Decision

1. Report Purpose

- 1.1** To update the Committee on progress in several areas of external governance activity that impact on areas of the Committee's remit.

2. Recommendations

- 2.1.** The Committee is invited to:

- **note** the report;
- **decide** (ref item 4.1 below) whether to recommend to the Board that it mirrors the Scottish Government/Public Appointments approach in the event of an Assigned College Non-Executive Board Member reaching the end of their tenure in the present circumstances when it may not be possible for a board to conduct an open recruitment process effectively.

3. Background

- 3.1.** There have been changes and/or delays in several areas of legal/regulatory activity with implications for areas of the Committee's remit, as a result of Covid-19 arrangements.
- 3.2.** The following report provides a summary for the Committee's information.

4. External Governance Developments

4.1. Non-Executive Board Appointments

The Scottish Government issued advice in March that for any non-executive board members on regional boards whose tenure expired between then and mid-June, the rules would be relaxed to allow them to remain in post for the purposes of business and governance continuity. This would be in line with

current Public Appointments practice (see item 4.2). The Scottish Government should be informed of any such proposed temporary extension of tenure.

The advice at the time of writing this report is that the current arrangements are likely to be extended beyond mid June.

GCRB does not anticipate any Non-Executive vacancies arising on its own board before 2021. The N&R Committee reviews membership and tenure annually at its October meeting.

For Assigned College Non-Executive appointments, it is proposed that GCRB should mirror the Scottish Government approach if a College anticipates a vacancy arising and wishes to recommend that the term of the Non-Executive Member in post is extended until an open recruitment exercise can be undertaken. Given that there has been only informal communication from the Scottish Government on this matter, GCRB will seek further information and clarification should the need arise.

4.2 Public Appointments (including regional chairs)

The recruitment of regional chairs has been put on hold for the time being, in line with arrangements for all public appointments in Scotland. This will be reviewed in June. While this does not have direct implications for GCRB, there are several vacancies across the sector at the present time with interim chairing arrangements in place.

4.3 External Effectiveness Reviews

The Good Governance Steering Group has advised, further to consultation with the Scottish Government and SFC, that the deadline for completing reviews (and submitting reports to the SFC) has been extended to the end of April 2021. The previous deadline was end December 2020. The situation will remain under review, depending on Covid-19 developments.

This does not have significant implications for GCRB as the timescale aligns with GCRB's own planning schedule. The Committee will need to consider the process and the appointment of an external reviewer at its October meeting.

4.4 Trade Union Nominees on Boards

Publication of the consultation (including a Draft Order to amend both the 1992 and 2005 Acts) has been delayed and the Scottish Government will advise on new timescales/developments once it is in a position to do so. (The original timing was for TU nominees to join boards in August 2020.)

The Good Governance Steering Group will oversee the development of an agreed process for the nomination of TU members. Members have been consulted on a draft prepared by the Trade Unions.

GCRB will also be seeking some guidance on the role of a TU member on a regional board and partnership working at regional level.

4.5 Ministerial Guidance on College Sector Board Appointments

The appointments guidance has been under review during 2019-20 and a consultation was completed earlier in the year, to which GCRB had input via the Chair and Board Secretary. Finalisation, by the Scottish Government, and issue of the guidance has been delayed.

The most noteworthy change will be the strengthening of succession planning opportunities by allowing boards to recruit to future anticipated vacancies (within a limited period) as well as immediate vacancies.

4.6 Code of Good Governance

The Code of Good Governance has also been under review during 2019-20 and consultation had been completed. Finalisation, by the Good Governance Steering Group, and issue of the Code has been delayed.

It is expected that issue of both the revised Code and revised Appointments Guidance might coincide with the constitutional changes (ref item 4. above) to ensure that the new provisions apply at the time of issue, but no timescale has been announced as yet.

One significant change to the Code will be the requirement to ensure a minimum 50% non-executive participation in decision-making (ie, in overall membership of committees and in any quorum). This is a point which GCRB already observes in line with best governance practice, however, it has until now been written into charity legislation but not the founding legislation for regional boards/regional strategic bodies.

4.7 Code of Conduct

The Model Code of Conduct for Members of Devolved Public Bodies is also under review and consultation (which included Standards Officers and Colleges Scotland, so GCRB has responded via those channels) closed on 30 April 2020. An issue date has not been confirmed, however, it is possible that this will not be subject to the same delay as other guidance referred to above given that its content is not dependent on the forthcoming legislative changes.

The revised Code of Conduct provides greater clarity around key issues such as confidentiality and conflict of interest.

GCRB had invited the Chief Executive of the Standards Commission to lead a session earlier in the year to consider several aspects of the Code including confidentiality, conflict and collective decision-making. The session was postponed and is now delayed further by the current restrictions, but will be held in an appropriate form in 2020-21, ideally to coincide with the publication of the revised Code.

5. Risk Analysis

5.1 There are no risks associated with this report which is provided for information.

6. Legal Implications

6.1. There are no legal implications of this report.

7. Resource Implications

7.1. There are no new financial implications arising from this paper.

8. Equalities Implications

8.1. There are no immediate equalities implications arising from this report. However, the Committee should be aware that there may be implications for its Diversity Succession Plan should there be future delay with the recruitment of new members.

9. Strategic Implications

9.1. There are no new strategic implications arising from this report.

