

Committee(s): Audit and Risk Management Committee Audit and Risk Management Committee of the Board of Governors of the Guildhall School of Music & Drama	Date(s): 19/11/2019 13/11/2019
Subject: Interpretation of Office for Students Guidance Concerning the Independence of Members	Public
Report of: Comptroller and City Solicitor and Head of Audit and Risk Management	For Information
Report author: Matt Lock	

Summary

The Chairman of Audit and Risk Management Committee requested a report of the Comptroller and City Solicitor and Head of Audit and Risk Management to provide professional opinion in relation to the governance requirements of the Office for Students (OfS). Specifically, whether there were any criteria that would mean that Common Councillors serving on the Board of Governors of the Guildhall School of Music and Drama would not be considered independent.

Having reviewed published guidance and sought further clarification from the OfS, it is the opinion of both the Comptroller and City Solicitor and the Head of Audit and Risk Management that there are no such criteria.

Recommendation(s)

Members are asked to note the report.

Main Report

Background

1. A question was raised at the September meeting of this Committee in respect of governance arrangements of the Audit and Risk Management Committee of the Board of Governors of the Guildhall School of Music and Drama. The central issue being that the Chairman should be an independent Member, and there was question amongst the Board as to whether Common Councillors can be considered independent. The Chairman requested that a joint report of the Comptroller and the Head of Audit and Risk Management be presented to the Committee in November 2019 so the matter could be formally discussed.

Current Position

2. This report summarises guidance provided by the Comptroller and City Solicitor to officers of the Guildhall School and further clarification from the Office for Students (OfS), obtained by the Head of Audit and Risk Management.

Regulatory Framework

3. The OfS defines governance requirements within the following documents:
 - **OfS Regulatory Framework for Higher Education in England – Public Interest Governance Principles**, stating that there must be at least one external member of the governing body who is independent of the provider
 - **Committee of University Chairs Higher Education Code of Governance**, stating that the Audit Committee must be composed of a majority of Independent Members. “Independent” is used interchangeably with “External”, later defined in this document as non-executive
 - **Committee of University Chairs Handbook for Members of Audit Committees in Higher Education Institutions**, clarifying Independence, excluding senior employees of the School and the Chair of the governing body. This guidance also states that the Chair of the Audit Committee should not ordinarily be a co-opted Member of the Committee as this may limit their ability to attend all meetings of the governing body, although arrangements can be made to resolve this if required.

Interpretation of the Regulatory Framework

4. The Comptroller and City Solicitor and Head of Audit and Risk Management, having separately considered the above guidance, concluded that Common Councillors would be considered as Independent within the regulatory framework. Furthermore, that, provided they are not the Chair of the governing body and no other material conflict exists, that Common Councillors may serve as Chair of the Audit and Risk Management Committee of the Board of Governors of the Guildhall School of Music and Drama.
5. The Handbook for Members of Audit Committees in Higher Education Institutions provides examples of when Members would not be considered Independent, specifically where any material relationships and circumstances are likely or could affect a person’s judgment.
6. The first example is where a person “has or has had within the last three years a material business relationship with the institution, either directly as partner, shareholder, director, consultant or senior employee of a body which has such a relationship with the institution”. Common Councillors are not considered to fall within these examples as they are not in an equivalent position.
7. The second example is where a person “has significant links with any of the institution’s auditors, advisers, officers or senior employees through involvement in other bodies”. Again, it is not considered that the role of Common Councillor is such that their relationship with other parts of the Corporation would bring them within this definition. The role of Members is unpaid and non-executive.

Clarification from the OfS

8. The Head of Audit and Risk Management wrote to the OfS asking specifically:
- i. If there is any further guidance or interpretation on the size, composition, diversity, skills mix and terms of office of members
 - ii. If there is a further definition of “independent” or “external” in relation to members, or any guidance/requirements as to the arrangements for making appointments of such members
 - iii. If there is any specific guidance/requirements on the composition of the Audit Committee and who may be eligible/ineligible to serve as Chair of the Audit Committee

The OFS responded to say:

We are in the process of preparing some further guidance in this area, and we are expecting this to be available to providers in the early part of 2020. However, at the moment we do not have additional guidance available to answer your specific questions. Our general advice is to ensure that you are able to demonstrate how any changes you make to your governance arrangements align with the Public Interest Governance Principles and remain appropriate for your provider.

9. The Public Interest Principles require the Governing body to ensure that the size, composition, diversity, skills mix, and terms of office of the governing body is appropriate for the nature, scale and complexity of the provider. It may be necessary for the Board of Governors to appoint additional members through open recruitment, broadening the spread and depth of skills and experience.

Conclusion

10. There are no apparent criteria of the OfS that would determine that a Common Councillor, by virtue of them being a Member of the Court, is not considered independent to the Guildhall School. Subject to other considerations of independence, there is nothing to prevent a Common Councillor who is a Member of the Board of Governors of the Guildhall School serving as Chair of the School’s Audit and Risk Committee. The Board of Governors may, however, consider it necessary to recruit additional Members to meet the requirements of the Public Interest Principles.

Appendices

- None

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