

---

---

# Governance Discussion Paper

*Michaelmas Term 2005*

---



University of Oxford



---

## Governance Discussion Paper Michaelmas Term 2005



### Contents

Summary	1
Introduction	3
A. Background to the original suggestions	4
B. The legal framework and associated issues of good practice	8
C. Development of the proposal in the Green Paper	11
Annexe A1	
Outline of the University's current governance structure	17
Annexe A2	
Outline of Conference of Colleges committee structure	18
Annexe B	
Proposed governance changes: joint Opinion by Mr Wood and Ms Bryant	19
Annexe C	
Outline of the proposed new structure	23
Annexe D	
Draft revision of Statute VI	24
Annexe E	
Further joint Opinion on appointment, remuneration and removal of members of the Board of Trustees	33
Annexe F	
Possible reporting relationships	36
Annexe G	
Draft terms of reference and membership of major committees of the Academic Board	37



## Summary

The paper is divided into three main sections. The first provides some additional background to the proposals in the original Green Paper (Supplement \*3 to *Gazette*, Vol. 135; also available at [www.ox.ac.uk/gazette/2004-5/supps/review.pdf](http://www.ox.ac.uk/gazette/2004-5/supps/review.pdf)). The second addresses the legal framework and the associated issues of good practice, and the third proposes a development of the Green Paper suggestions.

### 1. Background to the proposals in the Green Paper (paras. 4–15)

This section addresses criticisms of the Green Paper by giving some details of the material collected in the consultation exercise in Michaelmas Term 2004.

Against the background of the changes made by the North Commission, the working party emphasises the priority which it wishes to give to ensuring the effectiveness of the governing body of the University.

### 2. Legal framework and issues of good practice (paras. 16–23)

The working party considers the legal issues and issues of good practice raised initially in the Green Paper and enlarges on them. It also considers in particular the chairmanship of Council. The paper includes a legal Opinion at annexe B by Derek Wood, QC and Ms Judith Bryant.

### 3. Development of proposals in the Green Paper (paras. 24–47)

The working party now proposes the following for consideration. (The suggested structure is in annexe C.)

- (a) A revised *Council*, the body with ultimate responsibility under Congregation.

(i) *Composition (para. 25)*

For the first five years of the new arrangements, Council should consist of an equal number of internal and external members and be chaired by Lord Patten in his personal capacity. Thereafter Council should consist of eight external and seven

internal members, chaired by one external member. Two of the internal members (in both the short and long term) would be the Vice-Chancellor and the Chairman of the Conference of Colleges.

(ii) *Method of election (paras. 37–40)*

A Nominations Committee chaired by the Chancellor would consider all proposals for membership of Council (both external and internal) and would put names to Congregation. Each person so put forward would have to be supported by at least six members of Congregation. Congregation would vote on each name individually.

(iii) *Major committees of Council (paras. 42–45)*

The major committees of Council would be (paras. 42 and 45)

General Purposes Committee

Audit

Finance

Investment

Remuneration

The suggested composition and role of the General Purposes Committee are set out in paras. 43–44.

(b) *Academic Board*

A body of 36 is proposed (para. 29) instead of the larger Academic Council suggested in the Green Paper. The Conference of Colleges would continue. The working party emphasises the need to work towards joint discussion and decision-making between the University and the colleges in areas where functions overlap (para. 28).

(i) *Composition (para. 29)*

Vice-Chancellor

Pro-Vice-Chancellors with portfolios

Heads of division

Proctors and Assessor

Ten members directly elected by  
Congregation

Ten members elected by the colleges

Two student members

(ii) *Functions and delegation*

A draft statute (annexe D) provides for both Council and the Academic Board, with extensive delegation in respect of all academic matters from the former to the latter. The question of delegation is considered in detail (paras. 31–34).

(iii) *Proposed major committees of the Academic Board (para. 47 and annexe G)*

Budgeting and Capital Planning

Education

Personnel

Research

Draft terms of reference and composition are set out in annexe G.

(c) *Congregation (paras. 35-36)*

No modification to its powers are proposed. It would directly elect ten members of the Academic Board and vote on the nomination of members of Council as put forward by the Nominations Committee. A specific power to initiate a vote of no confidence in Council is proposed (para. 40).

(d) *Remuneration of members of Council (para. 41 and annexe E)*

The legal considerations related to the possible payment of members of Council are set out in another Opinion by Mr Wood and Ms Bryant at annexe E. It is proposed that there should be a power to remunerate members of Council, although it is suggested that exercise of the power should be avoided as far as possible.

(e) *Other matters*

(i) The working party addresses concerns expressed in comments on the Green Paper about the arrangements for the Colleges Contributions Scheme and suggests that neither the proposals in that paper nor in the current document would in themselves have any implications for the scheme (para. 46).

(ii) The working party considers the proposals for a Scrutiny Committee which was made in comments on the Green Paper and gives reasons for not pursuing this (para. 48).

(f) *Consultative process*

There are two major elements to this.

(i) The discussion in Congregation on 1 November 2005 for which this paper provides a basis.

(ii) Formal comments on this paper are sought from individuals, colleges and university bodies by 18 November 2005.

## Introduction

1. The working party has now considered in detail the submissions made in response to the Governance Green Paper. (Where permission has been given, these have been published on the web at <http://www.admin.ox.ac.uk/vc/gov/responses.shtml>.) It is grateful to members of the University for the time and attention they have given to the important issues which have arisen.

2. In view of the nature and range of these submissions, the working party has agreed that the next stage of consultation and the discussion in Congregation on 1 November should be based on the following document which

- (a) sets out some more of the reasoning behind the proposals in the Green Paper, including the legal issues, and
- (b) invites the University to consider a development of those proposals.

As the working party is now suggesting a development to the Green Paper proposals, it does not intend to elaborate these significantly at this stage. It will be seen, however, that its further thinking on the Board of Trustees leads naturally into the new suggestion. The working party would be grateful for formal comments from individuals, colleges and university bodies by **Friday, 18 November 2005**. It will take these into consideration and will reflect on the discussion in Congregation. It will then decide what detailed proposals to put forward and will ask Council to consider the arrangements for further stages of consultation and for reaching decisions.

3. This paper contains the following main sections.

- A. Background to the working party's original suggestions in the Green Paper for an Academic Council and for a Board of Trustees (paras. 4–15).
- B. The legal framework and the associated issues of good practice (paras. 16–23).
- C. The development of the proposals made in the Green Paper (paras. 24–47). The proposition now is that Council should be reconstituted with, in the first instance, an equal number of external and internal members and chaired by Lord Patten (in his personal capacity). After five years, Council should have a bare majority of external members with an external member as chairman. It is further proposed that a relatively small Academic Board should be created and that the Conference of Colleges should continue.

Council has considered this document and commends it to the University.

## A. Background to the original suggestions

### Current governance structure

4. The working party prefaces this part of the paper with a brief reminder of the current governance structure. This is shown diagrammatically at annexes A1 and A2, the former being the university structure, narrowly defined, and the latter being the structure of the Conference of Colleges.

Prior to 2000, the University's main governing body was Hebdomadal Council, under which the General Board was responsible for the academic administration of the University. The structure was complex. A number of matters were dealt with by joint committees between the two bodies (notably the question of resource allocation, where although the General Board was the major spending sector some of its members served with members of Council on a joint Resources Committee). The General Board funded all academic posts, all academic departments, faculty boards, libraries and museums, and dealt with a wide range of policy and operational issues affecting those bodies. The eventual outcome of the 1997 Commission of Inquiry and the working party which followed it was the delegation of many of the General Board's functions to the divisions and the creation of a single Council, incorporating those functions of the former General Board which had not been so delegated and the functions of Hebdomadal Council. The four major committees were established.<sup>1</sup> There were many advantages in this. The Educational Policy and Standards Committee provided the opportunity for an examination of teaching policy and practice which the General Board had not managed to achieve through its Undergraduate and Graduate Studies Committees. The university budget was brought together and all sources of income are now considered by the Planning and Resource Allocation Committee. The new structure meant that difficulties which sometimes arose because of the somewhat unclear relationship between the Curators of the Chest, the Finance and General Purposes Committee of the General Board, and the Resources Committee no longer existed. The Commission was anxious to improve the relationship between the University and the colleges and sought to achieve this through formal college representation on Council, on divisional boards and on the major committees of Council.

5. The question the working party has posed to itself and which is crucial both to its proposals in the Green Paper and to the proposal in this paper is whether, *in the current circumstances of Oxford*, a single body responsible for governance under Congregation provides the best solution. The working party recognises it might seem premature to reverse the decision in 2000 to implement the Commission's proposal that there should be such a single body. The Commission proposed this, in particular to combine 'responsibility for the oversight of academic work with responsibility for allocating resources' (Report of the Commission of Inquiry, 1997, para. 4.82). The Commission concentrated on this issue and on the need for a body to oversee all the University's resources (the General Board being responsible only for part of these). It also concentrated on the unsustainable workload of the General Board and hence on the need to devolve much detailed work to a lower level (i.e. to the divisions). Circumstances have changed, however, even in the short period since the Commission reported in 1997. This is partly because of external factors (such as the Lambert Report, the Charities Bill and developing thoughts on university governance amongst bodies such as HEFCE and the Committee of University Chairmen). Some of these are discussed more fully below (paras. 16–23). The Commission's report referred to views on external members of university governing bodies when it recommended the inclusion of two external members on the new Council (see *ibid.*, paras. 5.62 and 5.63). Opinion and practice have developed still further since then. More important, however, in the working party's opinion, is that experience since 2000 has shown the need to address more closely the University's basic governance framework.<sup>2</sup> Oxford University is large and complex. It has 17,000 students, nearly 8,000 employees and a turnover (including the Press) of £880m. To maintain the necessary framework for the pursuit of teaching and research, the University must address a wide range of issues. The requirements of regulation and accountability, and the need for rigour in financial and operational control and in risk assessment and risk management, demand continual attention. However well prepared the business for committees

<sup>1</sup> i.e. Educational Policy and Standards, General Purposes, Personnel, and Planning and Resource Allocation.

<sup>2</sup> By governance is meant the processes of decision-making, the means by which the integrity of those processes is assured and the ways in which those making decisions are held accountable.



and however effective the committee structure, the ground to be covered is arguably too large for a single body to be as effective as the 1997 Commission intended. Comments received during the original consultation (see para. 14 below) were critical of the operation of Council. Throughout its work so far, the working party has been chiefly addressing the effectiveness of the current Council as the prime responsible body for the University. Some more detail is given below of the criticisms of present arrangements which were made in the first round of consultation in Michaelmas Term 2004. The working party does not think that these issues can be addressed simply by minor adjustments.

### Proposed Academic Council

6. In the Green Paper, the working party said that it had identified three major issues for attention. These were

- (a) the parallel university/college academic decision-making processes;
- (b) remoteness of individuals from decision-making;
- (c) lack of understanding of how the governance system works and, by extension, of major policy questions and other issues under discussion by the University's responsible bodies.

The last point affects the quality and effectiveness of decision-making. If members of the University are inadequately informed on governance issues and related questions, their contribution to the continuing evolution of both policy and practice is diminished.

The working party also noted that there were criticisms of the details of the current organisation.

### Evidence for the issues listed in para. 6

7. Some of those who have commented on the Green Paper have questioned the working party's analysis. Some 90 submissions were received in reply to the original request for views on the governance arrangements introduced in 2000. Some 35 of these included references (of varying lengths and detail) to the university/college relationship in one form or

another. Of course the analyses and the suggestions for addressing the problems which were identified took significantly different forms, but the very clear evidence given to the working party was that a better system was needed for enabling the University and the colleges to be informed about each other's concerns, to hold effective discussions about matters where agreement was needed and to implement decisions affecting all parts of the federal structure. Whatever the eventual solution, the following quotations from three of the original submissions by colleges illustrate the nature of dissatisfaction with current arrangements.

- (a) '... the University must reach beyond processes of mere consultation with the colleges towards structures that enable real participation in its decision-making and resource allocation processes.'
- (b) 'Colleges must have a more credible presence within the Council and its committees.'
- (c) In the context of remarks about both the effectiveness of the Conference of Colleges and of PRAC and EPSC, 'One way of combining these two points (the roles of PRAC/EPSC and the federal/unitary model) might be to allow the legal federation whilst simultaneously having a unitary decision-making process, with both parties represented.'

8. Quite often, the concerns about university/college relationships were expressed in terms of the relationships between the divisions and the colleges. There was a strong emphasis on the need to improve matters at this level so that divisional policies and college policies could be brought together, understood and agreed after appropriate discussion. The working party took the view that this could be done effectively only if a means could be found for providing a joint framework for policy discussion and decision, and for sharing information.

9. As for the issues noted at 6(b) and 6(c) above, they permeated many of the responses in various forms. The criticisms came not only from submissions by individuals who are not office-holders or members of major committees but also from constituencies such as members of Council ('the

majority of members of the academic staff of this University feel very distanced from Wellington Square'), the Conference of Colleges (which urged the provision of termly information about Council and its committees) and divisional boards (e.g. 'it is important that members of departments have a sense of involvement in divisional business'). The problem is particularly emphasised, however, in submissions by individuals.

10. Views expressed on the relationship between individual members of the University and its decision-making processes suggested further reasons for proposing major changes. Divisionalisation has released significant energy and has enabled subjects to develop differently according to their needs (as intended). Divisionalisation brings with it, however, a risk of incoherence. Moreover, that risk is increased if the structure does not facilitate good communication, with the result that individuals feel distanced from decision-making bodies. Incoherence also arises from the difficulties which Council has so far experienced in establishing a clear central policy framework within which subsidiarity can work. One reason for this (although not the only one) is the absence of a fully effective mechanism for establishing policy in some fundamental areas which require agreement between the University and the colleges.

11. These considerations persuaded the working party that it might seek the views of the University on a bold step, namely the creation of an Academic Council both to try to achieve much greater coherence in policy-making across the whole institution, bringing the colleges and the University more closely together in general, and at the same time to provide a means of informing more members of the University about items of academic business and of engaging them in it.

12. The working party has also discussed the role and operation of the divisions themselves. Although they have attracted some criticism, the working party is in no doubt that their establishment, as recommended by the Commission of Inquiry, was right. In the working party's view, the detail and volume of business required decision-making to be more extensively devolved from the centre. The divisional structure provides a reasonable compromise between the need

for different subject areas to develop in different ways and the need for a framework within which long-term strategy can be formulated. The divisions have operated in different ways but, at their best, have achieved much in a short time. As is frequently the case, communication needs to be improved so that individuals within divisions are aware of what their divisions are doing and the value of what is being done. If, following consultation, the governance structure now proposed is pursued, the working party will consider further how the workings of divisions might be improved, notably in distinguishing between issues in which divisional involvement is needed and those where direct communication and consultation between the centre and departments or faculties might be more appropriate.

### Proposed trustees

13. The proposal that there should be a small Board of Trustees to oversee the University's general governance under Congregation stemmed in part from the comments submitted and in part from the working party's analysis of the circumstances of the University, of the legal considerations and of general developments in university governance.

14. First (as noted above in para. 5), many of the original comments were critical to a greater or lesser extent of the way in which Council had operated since 2000. This criticism related not only to the uncertainty about how best to establish and implement policy in a federal system. It also included concern about the range which Council has to cover ('with hindsight what we expected of Council was impossible'), about the lack of relevant expertise, about lack of long-term planning, about size and composition and about the relationship between Council and its committees. Second, the working party paid particular attention to the size and complexity of the University, as referred to in para. 5, and continues to do so. These characteristics of the University were not directly articulated by the original comments but were certainly implicit in many of them. To them must be added the fact that the University receives significant amounts of public money for which it is accountable. It is also constantly in the public eye. Given these points and

the extent of the risks faced by the University, it must have governance arrangements which are commensurate with the task to be undertaken. These will necessarily be different from the systems which are entirely adequate for less complex institutions. The working party is committed to working within the traditions of academic self-government and college autonomy, but it thought and thinks (as stated above in para. 5) that more attention needs to be paid to what it has called institutional governance than seems to have been possible so far in the post-2000 structures. This was illustrated for the working party by difficulties which the University has encountered in areas such as financial planning and control or the installation of new systems. There is a clear need to ensure that there is a governing body which, by virtue of its terms of reference and membership, is capable of looking forward and of actively and continually addressing and determining the financial and organisational needs of the University so that it has the best possible framework for its teaching and research. Many universities both within the UK and elsewhere base their governance on two major bodies (e.g. a Council and a Senate). Although it is certainly true that the precise dividing line between the responsibilities of the two bodies varies from one institution to another, the broad distinction between 'institutional' and 'academic' governance is reasonably clear in practice.

15. A third set of factors influenced the working party's thinking in this area. This was a combination of legal considerations and of external expectations of what arrangements are appropriate for institutional governance in universities. These are all relevant to the issue of external membership of the University's governing body. There has been much criticism of the working party's approach in this area. Consequently, it is desirable to set out the working party's thinking more fully and to explain its further reflections since the Green Paper was published, as these are crucial to the proposal in this paper.

## B. The legal framework and associated issues of good practice

16. In addressing the fundamental question of how to determine the organisation of responsibility for the governing of the University, under Congregation, the working party bore in mind the following:

- (a) the fact that the University is a charitable corporation;
- (b) the possible effect of the Charities Bill (which lapsed as a result of the General Election but has now been reintroduced in the new Parliament);
- (c) views which have developed in the higher education world in recent years about university governance generally;
- (d) the particular history of governance arrangements in Oxford and the powers which the University has to change them.

### The University as a charitable corporation

17. The latest legal advice is annexed at B<sup>3</sup> in the form of an Opinion from Mr Derek Wood, QC and Ms Judith Bryant. It emphasises that all charities, whether they are charitable trusts in the traditional sense or charitable corporations such as the University, have duties which are to be performed by 'charity trustees'. In the case of charitable corporations these 'trustees' are not trustees in the full legal sense of the word because the property of the charity does not vest in them, but in the corporation. They are, however, treated by the law as being in the position of trustees. The body identified as the statutory 'charity trustees' of any charity is the body 'having the general control and management of the *administration* [italics supplied] of the charity' (Charities Act 1993, section 97(1)). As stated in the legal annexe to the Green Paper, the present Council is taken to fulfil the role of the 'charity trustees' for the purposes of the Act, and the latest legal advice confirms this. The advice therefore emphasises the importance, when changes in governance are made, of ensuring that there remains a body which can be identified as having the general control and management of the administration of the University. It has been questioned whether the Act *requires* there to be such a body. It certainly *assumes* that there is such a body to carry out the duties laid down by the

Act, and this might be deemed to be a requirement in that if there were no such body very serious questions might be asked about whether the charity was capable of functioning properly.

### The Charities Bill and the composition of Council

18. The Opinion at annexe B points out that the definition of 'charity trustees' in the 1993 Act is adopted and carried forward in the Charities Bill, and that the activities of exempt charities will be subject to the supervision of a 'principal regulator'. Universities are exempt charities, and in their case the regulator will be HEFCE. It may therefore be expected that the body which qualifies as the University's statutory charity trustees for the purposes of the 1993 Act will, under the new legislation, be subject to closer regulation and scrutiny once HEFCE acquires its new role.

19. As to the composition of that body, it had been assumed by the working party that it would be difficult for Oxford under the new regulatory regime to maintain Council in its present form, having paid members of the academic staff of the University in an overwhelming majority, and only four lay members. This composition certainly conflicts with the Governance Code of Practice issued by the Committee of University Chairmen (CUC), which says that 'the governing body shall have a majority of independent members, defined as both external and independent of the institution'. Moreover, in the legal advice which it initially received, the working party's attention was drawn to the statement made by the Charity Commission in one of its publications (CCII – Payment of Charity Trustees) that 'we generally recommend that no more than one or two trustees should be employed and paid'. If HEFCE were to be the regulator, the working party was concerned that the present composition of Council would encounter serious criticism. This is reinforced by the letter from the Privy Council Office referred to in para. 12 of Annexe B which shows external thinking about the composition of Oxford's governing body. All these points reinforced the working party's overall anxiety that Council, comprising overwhelmingly members from within Oxford's academic community, did not

<sup>3</sup> It should be noted that this Opinion and the Opinion at annexe E were provided in May 2005 and therefore refer to the proposals in the Green Paper. They assisted the working party in preparing the development of those proposals now set out below. It is important to keep the chronology in mind when reading the Opinions.

possess the wide range of experience and expertise necessary for the successful governance of the University in its present extensive and complex form. Both the legal considerations and that more general concern persuaded the working party that the new central governing body of the University should be a Board of Trustees consisting entirely of external members. The working party also considered that there would be advantages if the University were to take the initiative and itself propose changes to the Privy Council.

20. The further legal advice which the working party has received indicates, however, that it is not necessary for the new governing body to consist only of external members in order to comply with the law, and indeed that good practice indicates that it will be better qualified to perform all the functions required of it if it were to contain a significant minority of internal academic members, being members of the salaried staff of the University and its colleges. The arguments, and the materials relied upon by Mr Wood and Ms Bryant, are fully set out in paras. 10–19 inclusive of their Opinion at annexe B. The working party accepts the advice there that the needs of Oxford require that members of the University serve on the trustee body. In so doing, the working party has noted the concerns expressed in comments on the Green Paper about the risk that a wholly external body will be too remote from the academic community.

21. The question then is what the balance should be between internal and external members. The working party considers that the general principle for the long term should be that the external members should be in a majority of one. The reasons for this are as follows. Carefully identified external members can provide expertise both in technical matters of a non-academic nature and in the oversight of the operations of a large institution but they cannot be expected to be experts in the academic business. Internal members bring a detailed understanding of the academic business of the University but the complete range of expertise necessary for the running of a large and complex organisation may not be available from within. In any case internal members, whatever their expertise, ultimately cannot

demonstrate the degree of personal disinterestedness of an external member. The expertise of external members will allow them to question the executive and to hold it to account; their independence will mean that they can do so without fear or favour. A Council with a bare majority of external members would provide, and would be seen to provide, the toughest environment for the executive and a vigorous balance of expertise, thus setting the highest standards for the strategic planning and administration of the University and for its stewardship of public funds.

## 22. *Chairmanship*

### (a) *The need for an external chairman*

The working party thinks that the present arrangement in which the Vice-Chancellor is both the chief executive officer and the Chairman of Council concentrates too much power, and potentially conflicting responsibilities (for example in the handling of the audit function), in the hands of one person. Therefore the working party proposes that there should be a separate Chairman of Council. In the long term, this should be one of the external members as clearly the relationship between an internal Chairman and the Vice-Chancellor would be highly ambiguous.

### (b) *The first chairman*

The working party stated in the Green Paper (para. 41) that it did not believe it to be appropriate for the Chancellor to chair the governing body of the University. It continues to believe that for the Chancellor to be *ex officio* chairman is inappropriate as the roles are fundamentally different. Were this to be proposed, it would entail extensive discussion of the role of the Chancellor and of the rules governing his or her election and period of office. However, the working party suggests that, at the beginning of the proposed new dispensation, the University should take advantage of its association with Lord Patten and of his extensive experience and skill. It proposes therefore that he should be the first chairman of the reconstituted Council, holding this position in his personal

capacity and not *ex officio* as Chancellor. The appointment *ad hominem* of Lord Patten would be consistent with the requirement that members of the University's governing body must have the necessary skills, knowledge and experience to ensure the highest standards of institutional governance. He can also be regarded as to some extent external but his knowledge of the University would reassure members of Congregation that the transition to a new system of governance would be sensitive to the ethos of the University and to the interests of the academic community.

23. The working party believes that these proposals would move the University significantly towards meeting current good practice and the views of the Privy Council referred to in para. 19. For the time being there would not be an unambiguous majority of external members, but the University would clearly be migrating towards such a majority. The working party believes that the need for a transitional approach would be recognised. Meeting external requirements or expectations is of course not sufficient to commend the proposals; the most important argument is advanced in para. 21. However, there should be consequential advantages in changing external perceptions and in securing a reduction in the weight of regulation. For example, HEFCE has indicated that universities which adopt the CUC Governance Code of Practice will no longer be required to submit to it a detailed Annual Monitoring Statement. At present, Oxford conforms to that code in all but the composition of Council. As pointed out in para. 19, the code indicates that the governing body of a university should have a majority of external members.

## C. Development of the proposal in the Green Paper

24. The working party has increasingly concentrated on the need to ensure the highest standards of governance at the centre of the University. This involves, as indicated in para. 5, a reconsideration of the constitution and functions of Council. From improvements in this respect should flow general improvements in decision-making and the conduct of business throughout the University. Bearing in mind all the points made above, and especially the working party's further consideration of the legal framework, issues of good practice, and the particular arrangements for the chairmanship of the governing body of the University, the working party now proposes the following development of the proposals in the Green Paper. This should be read in the context of the maintenance of the roles and responsibilities of Congregation (see paras. 35–36 below).

25. The working party remains of the opinion that a separation between institutional and academic governance is desirable. The current Council (retaining its name) should be modified so that it contains 15 members. In the medium term eight of these should be external to the University and seven internal. The internal members should include the Vice-Chancellor and the Chairman of the Conference of Colleges *ex officio*. For the first five years, however, Council should be chaired by Lord Patten *ad hominem* with seven internal and seven external members. At the end of this period Lord Patten would cease to be chairman and Council would thereafter consist of eight external members and seven internal members, with one of the external members in the chair.

26. Apart from Lord Patten and the *ex officio* members of Council, appointments of members of Council would be proposed to Congregation by a Nominations Committee chaired by the Chancellor. Details of this committee are given below in paras. 37–39.

27. In its revised form, Council would continue to be the body ultimately responsible for the University, under Congregation. It would therefore be entrusted with institutional governance and in particular for the general control and management of the administration of the University, so satisfying the provisions of the 1993 Charities Act. To undertake

responsibility for academic governance there should then be a body under Council which might be called the Academic Board. On its size and composition, the working party recognises that the large body proposed in the Green Paper, bringing together the University and the colleges, has not found favour in the University. The working party therefore proposes that it should be smaller, along the lines of some of the suggestions made in comments on the Green Paper (e.g. by the Conference of Colleges). As a consequence, the working party no longer proposes a Colleges Committee. The Conference of Colleges and its committees would continue.

28. However, the working party has drawn attention in para. 7 to the evidence of a widespread wish amongst members of Congregation to bring the University and the colleges more closely together both in discussion and in decision-making. It continues to believe that this should be a joint objective of the University and colleges in those areas where their functions overlap, so as to produce the necessary agreement for the institution to function as effectively as possible. Therefore, although the working party now proposes the creation of a smaller body than in the Green Paper and does not propose that the Conference should cease to exist, it thinks that in any new structure all concerned should work towards a more unitary process in appropriate areas. This will require better distribution of information; it will equally require greater administrative effort in all aspects of the relationship between university bodies and college bodies. In these circumstances, it is particularly important for Conference to achieve an arrangement under which, in certain circumstances, the college representatives on the Academic Board could enter into commitments on behalf of the colleges. The working party thinks that it would be desirable for the Chairman of the Conference to be one of the college representatives on the Board but this would be for the colleges to decide. Colleges might also wish to consider how best to secure an appropriate range of expertise amongst their representatives.

### Possible structure of the Academic Board

29. The working party suggests that the Academic Board might consist of 36 members, made up as follows.

Chairman:	Vice-Chancellor	1
<i>Ex officio</i> members:	Pro-Vice-Chancellors with portfolio	5
	Heads of division	5
	Proctors and Assessor	3
Members elected by the Colleges		10
Members directly elected by Congregation		10
Student members		2

The Congregation members might be elected in the following constituencies:

From members of Congregation in the Life and Environmental Sciences, Mathematical and Physical Sciences and Medical Sciences Divisions	3
From members of Congregation in the Humanities and Social Sciences Divisions	3
From members of Congregation generally	3
From members of Congregation who are contract research staff	1

30. The proposed new structure is outlined in the diagram at annexe C. The following paragraphs consider in turn the relationship between the proposed revised Council and the Academic Board, the relationship between both those bodies and Congregation, and some details of the process for appointing and removing members of Council and of the possible committee structure for both Council and the Academic Board.

### Relationship between Council and the Academic Board

31. There was considerable criticism of the legal basis of the proposals in the Green Paper for separating academic governance from institutional governance. Particular attention was concentrated on the statement in para. 33 of the Green Paper that

academic matters would be in their entirety the responsibility of the Academic Council and that this responsibility would be formally delegated to the Academic Council by the trustees. Aside from the legal issues, it has also been argued that it is in any case unrealistic to suppose that there can be a clear separation between academic matters and institutional governance.

32. On the legal issues, it is accepted that an absolute delegation such as is envisaged in the Green Paper is not possible, but the latest legal advice is that, with careful drafting, it is possible both to satisfy section 97(1) of the Charities Act (see para. 17 above) and to leave the academic body free to exercise its judgement on academic matters. On the issues of practical operation, the University had a structure before 2000 which allowed considerable latitude to the General Board on academic matters. The Board was responsible ‘under Council ... for the academic administration of the University’. Similarly in all other UK universities where there is a Council and a Senate (or an equivalent structure), academic matters are regarded as the Senate’s prime responsibility. A Council would have ultimate powers to override a Senate but would only exercise these *in extremis*. Doubts which it had on proposals coming to it from the Senate would be expressed by referral back. Oxford has the additional safeguard of Congregation through which the academic community can intervene if it considers that the bodies with responsibility for governance are in error. The working party emphasises, however, the points made earlier in this paper (e.g. in para. 5) about the need to concentrate more on institutional governance. If individual members of the University are to be able to continue to undertake teaching and research to the highest standards, and the University as a whole to continue to fulfil its task of advancing knowledge and understanding, it is essential for there to be confidence that the best possible institutional governance and administration is in place and that risks have been identified and are being controlled, as far as is humanly possible. In the working party’s view, this requires a structure such as it now proposes.

33. The working party has considered a draft by Mr Wood of a possible new version of Statute VI (the



statute which at present defines the powers and membership of Council) which shows how the structure outlined above might be specified. This is annexed in full at D together with explanatory notes. Within this statute sections 30–35 provide for the Academic Board. Section 33 covers the relationship between the trustees and the Council and section 33(2) is crucial. It provides as follows:

‘In making any decision on any matter submitted to it by the Academic Board, Council

- (a) shall not substitute its own judgement for that of the Academic Board on any question which involves an assessment of academic merit; and
- (b) shall in all cases give proper weight to the expertise of the Academic Board.’

34. The commentary on the draft statute (see p. 32) makes clear that a balance is being struck and the working party recognises that both Congregation and the Privy Council will need to consider this. At this stage, the working party is reassured that it should be possible to produce a workable structure, satisfying the requirements of the University and of the law. With regard to the Privy Council, there have been informal discussions with the Privy Council Office. While such discussions are of course without prejudice, no major reservations have been expressed about the proposed delegation. With regard to Congregation, it is hoped that the presence on Council of seven members drawn from those currently working in the University, as the working party now envisages, would allay fears that a body which had no comprehension of academic issues might exercise inappropriate influence over the proposals of the academic community as expressed by and through the Academic Board.

### **Relationship between Congregation and the proposed new bodies**

35. Throughout its initial deliberations, the working party recognised the importance of Congregation and, in the Green Paper, it made clear (para. 40) that as far as was consistent with charity law it wanted to maintain the existing powers of Congregation (as well as adding new powers relevant to the structure suggested in the Green Paper).

36. Under the revised proposal, Congregation will elect a proportion of members of the Academic Board directly (see para. 29 above) while its involvement in the appointment of members of Council and their removal is set out in paras 37–40 below. The working party now also proposes that all external members of Council should become members of Congregation for the duration of their appointments to Council, so establishing a clear link between the two bodies. As for the relationship of the existing powers of Congregation to charity law, it is clear from the further legal advice taken by the working party that it is not necessary to propose any modifications other than those which would follow inevitably from the establishment of the Academic Board (i.e. any drafting changes necessary to include references to the Board as well as to Council). Para. 7 of the Opinion at annexe B supports the view that the current Council (and in due course the reconstituted Council) has or would have the general control and management of the administration of the University (as required by section 97(1) of the 1993 Charities Act) and the powers of Congregation do not derogate from this formulation. The suggestion in annexe B of the Green Paper (the legal annexe) that in order to fulfil the statutory requirement for charity trustees the relevant body must be able ‘to take all final decisions on matters of fundamental concern to the institution’ (as set out in the CUC Code of Practice) is in the view of the most recent advice a broader formulation than the law requires. Section 2 of the draft statute at annexe D makes clear the relationship of Congregation to the proposed new Council.

### **Appointment and removal of members of Council, and their remuneration**

37. The working party has also taken further legal advice on these issues since the publication of the Green Paper and an Opinion by Mr Wood and Ms Bryant is annexed at E.<sup>4</sup> As stated above in para. 26, the working party thinks that the nomination to Congregation of candidates for membership of Council, apart from Lord Patten as chairman and those serving *ex officio*, should be by a committee as is set out in sections 21–23 of the draft Statute VI. This will not be a committee of Council but a free-standing committee responsible for putting forward

<sup>4</sup> See footnote to para. 17.

proposals to Congregation.<sup>5</sup> It would be chaired by the Chancellor and otherwise would consist of the High Steward, one former Vice-Chancellor, one Vice-Chancellor of another UK university, and three members of Congregation elected by Congregation (or four if there were no former Vice-Chancellor able or willing to serve).

38. The working party recognises that it would represent a departure from normal practice for internal as well as external members of Council to be appointed by Congregation through this mechanism rather than by direct election. However, the working party considers that this is essential. The objective of the Nominations Committee should be to ensure that, as stated in para. 18 of the legal Opinion at annexe B, the appointees 'possess collectively all the skills, knowledge and experience' necessary to enable them to discharge their responsibilities. If only some of the members were to be appointed through the committee, the requisite coverage and balance might not be achieved. The involvement of Congregation would, it is hoped, be regarded as a means of overseeing the operation of the committee and the working party envisages that Congregation would be able to vote on each individual. The working party originally suggested that all the external members should be alumni; this has been criticised and the working party recognises that such a limitation could impede the appointment of a body with all the necessary 'skills, knowledge and experience'. Given the range of talents amongst the alumni, this might be only a hypothetical objection and the working party remains convinced of the need to strengthen links with alumni through the involvement of a number in the University's governance. Recognising, however, the need not to constrain the Nominations Committee, it proposes that the committee should be advised to work on the basis that the external members should *normally* be alumni. The Nominations Committee will need to satisfy itself as far as possible not only about the experience and competence of those whom it proposes for appointment but also that they will be able to devote a satisfactory proportion of their time to their responsibilities as members of Council. Diligent and extensive commitment is essential.

39. On the more detailed mechanisms for appointing and removing members of Council, the working party thinks that it should be open to anyone (whether a member of Congregation or not) to propose a name to the Nominations Committee, but before any name is put formally to the committee that person should secure formal nomination from at least six members of Congregation. The Nominations Committee would put its preferred name or names (with biographical details and formal support from members of Congregation) to Congregation. If one or more proposals were rejected, it would be for the Nominations Committee to propose replacements. These proposals are set out in full in sections 26 and 28 of the draft statute.

40. On removal of members, the working party distinguishes between cases where the Council as a whole is the subject of serious criticism and cases where an individual's continuing membership is in doubt. In the former case, the working party proposes that Congregation should be given a specific power to express no confidence in Council as a whole. This could in fact be done through the existing provisions for resolutions, but the working party thinks it desirable that there should be a specific provision. The working party also proposes that, as part of this provision, there should be an automatic postal vote. A debate would take place and its proceedings would be published, but there would be no initial vote on the floor of Congregation. In cases where it is necessary to end the appointment of an individual member, the working party draws attention to the procedure proposed in section 29 of the draft statute.

41. On the question whether the members of the central body can or should receive payment for their services as members, again the Opinion annexed at E indicates that the University has more room for manoeuvre than previously thought. A case can be made for giving the University power to make payments in case it is impossible otherwise to secure external members with the experience required who are prepared to provide the necessary commitment. The draft statute provides expressly that remuneration can be made available. If such provisions were approved by Her Majesty in Council

<sup>5</sup> The Nominations Committee proposed in the Green Paper would have been responsible for proposing the appointment of the Vice-Chancellor. The working party now considers that the current committee for appointing the Vice-Chancellor should continue.

under the 1923 Act it is unlikely that they would be challenged. The working party considers, however, that every effort should be made to avoid payment for services (as distinct from the payment of expenses).

### Committee structure

#### 42. (a) *Council*

The working party envisages that the reconstituted Council would have a General Purposes Committee and the following other major committees. These are

- (i) Finance
- (ii) Audit
- (iii) Investment
- (iv) Remuneration

43. The General Purposes Committee is seen as having the following functions.

- (a) Many bodies report to Council at present, as well as its major committees. Annexe F lists these other bodies and makes suggestions on which should, under the structure now proposed, continue to report to Council and which to the Academic Board. It seems desirable that, as is the current practice, the bodies other than its major committees which report to Council should normally do so via a General Purposes Committee, so that any matters which require discussion before they reach the full Council can be considered and as far as possible Council can be presented with comprehensive proposals.
- (b) Council is, and will continue to be, responsible for submitting to Congregation both changes in statutes and also other legislative changes which do not fall within the purview of the Academic Board. The General Purposes Committee would oversee the substance of this business as at present.
- (c) There will be many items of business which will not fall within the terms of reference of any one of the other major committees of Council, or will transcend them, and such items should therefore either be considered by the General Purposes Committee before they reach Council or (in the

case of discrete matters which have no strategic significance) should be dealt with by the General Purposes Committee under delegated powers.

44. As for the composition of the General Purposes Committee, the working party proposes that this should consist of the Vice-Chancellor, the Chairman and Vice-Chairman of the Conference of Colleges, two other (internal) members of Council, the five heads of division, the four Pro-Vice-Chancellors with the Planning, Education, Research, and Personnel portfolios, and the Proctors and the Assessor. The draft statute permits committees of Council to include non-members of Council. A committee with this composition would be well equipped to address the wide range of business which would fall to it under 43(a)-(c).

45. The Finance, Audit, and Investment Committees already exist as committees of the present Council; the composition would be amended to link into the new structure of Council and to ensure the necessary level of expertise through an appropriate mixture of internal and external members, including some non-members of Council (as at present). The Remuneration Committee (whose function, as in the Green Paper, would be to determine the salaries of the Vice-Chancellor and of senior officers) would consist entirely of external members of Council and would be chaired by an external member of Council with the Pro-Vice-Chancellor (Personnel) in attendance. The committees would all be set up by regulation and therefore their constitutions and terms of reference would be published in the *Gazette* and subject to the normal legislative procedure.

46. Comments on the Green Paper included particular concerns about the implications of the proposals for the college contributions scheme. The working party is clear that neither the Green Paper nor the proposal in this paper would in themselves have any implications for the scheme. Responsibility for it would continue to rest with Council to which the College Contributions Committee would report. The scheme would continue to be governed by university legislation. Any future changes in the legislation would be subject to discussion, to consultation, and to approval by Congregation.

#### 47. (b) *Academic Board*

The working party envisages that there would be four major committees of the Academic Board, as proposed for the Academic Council in the Green Paper. The working party has considered their possible terms of reference and composition and a draft of these is set out in annex G to give an indication of the working party's thinking although it is recognised that further work is needed on these. As with the committees of Council, the committees of the Board would be set up under the normal legislative processes. Attention is drawn to the statement about the principles for determining committee membership. Other existing academic committees or bodies would also report to the Academic Board (e.g. the various bodies responsible for Academic Services and University Collections).

#### **Scrutiny Committee**

48. The working party notes that, in comments on the Green Paper, the creation of a Scrutiny Committee was suggested as an alternative to a body responsible for institutional governance. This was envisaged as fulfilling some of the functions of that body to enquire into and test the University's approach to various matters, including consideration of particular issues before decisions are finally made. The working party considers that, in so far as such a body would look back over decisions already taken, this is the function of the Audit Committee. In so far as it would consider issues in advance of the taking of decisions, such a committee would not be an appropriate substitute for a fully effective Council, on the lines proposed above, which is given responsibility for institutional governance and is competent to take that responsibility (including legal responsibility) by virtue of the interests and expertise of its members. The existence of a Scrutiny Committee alongside the University's governing body would mean that the location of responsibility and accountability was unclear, and the working party does not therefore wish to propose the establishment of such a committee.

#### **Conclusion**

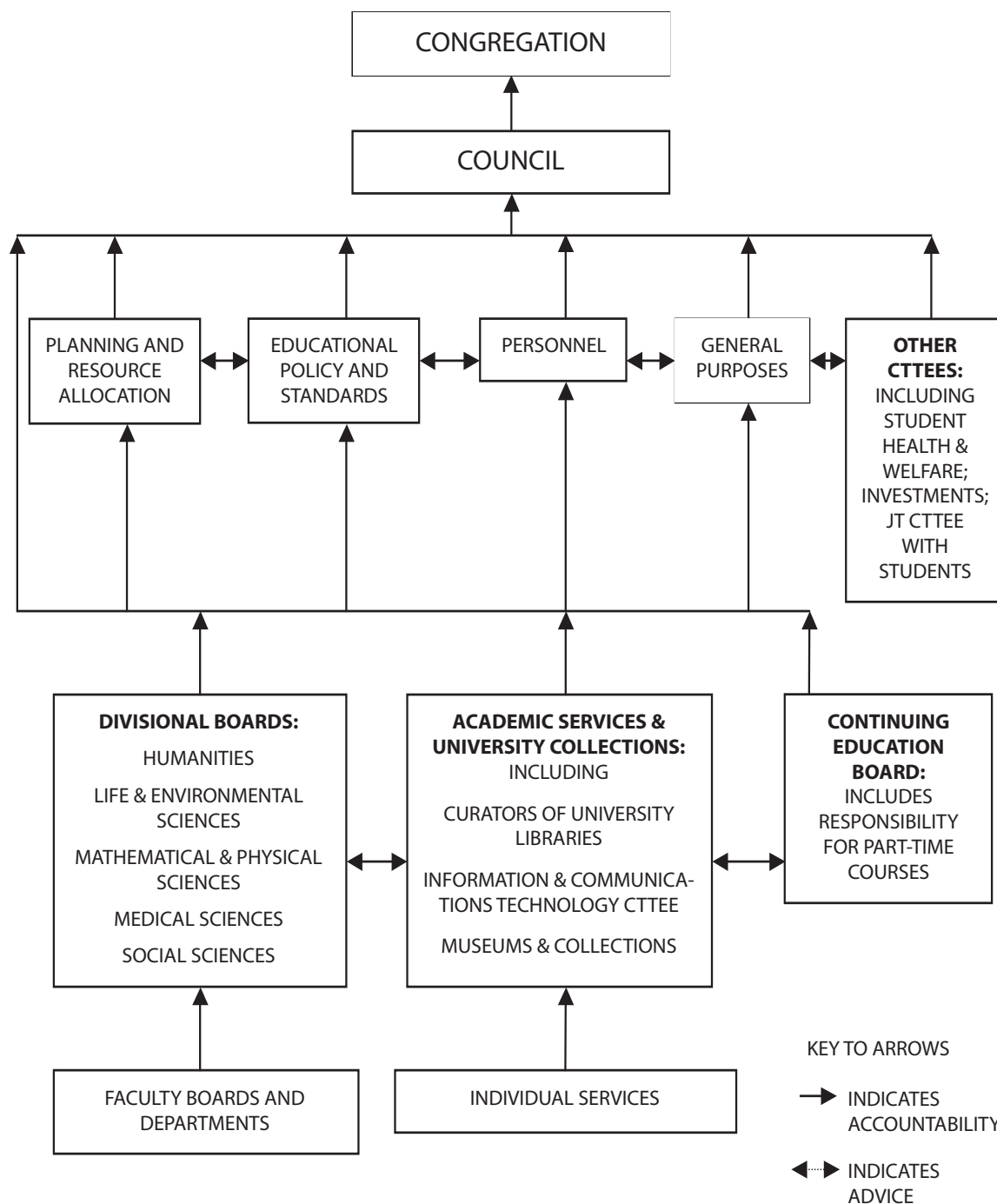
49. The working party now invites the continuation of the debate on university governance. Bearing in mind all the points raised above, it asks the University to consider a structure which incorporates

- (a) a Council to undertake institutional governance with, a bare majority of external members but in due course, for the first five years to be chaired by Lord Patten with a balance between external and internal members and
- (b) a small Academic Board to be responsible for the areas outlined in section 30 of the draft statute.

**Comments from university bodies, colleges and individuals should be sent to the Secretary of Faculties, University Offices, Wellington Square (email: [secretary.faculties@admin.ox.ac.uk](mailto:secretary.faculties@admin.ox.ac.uk)) by 18 November 2005.**

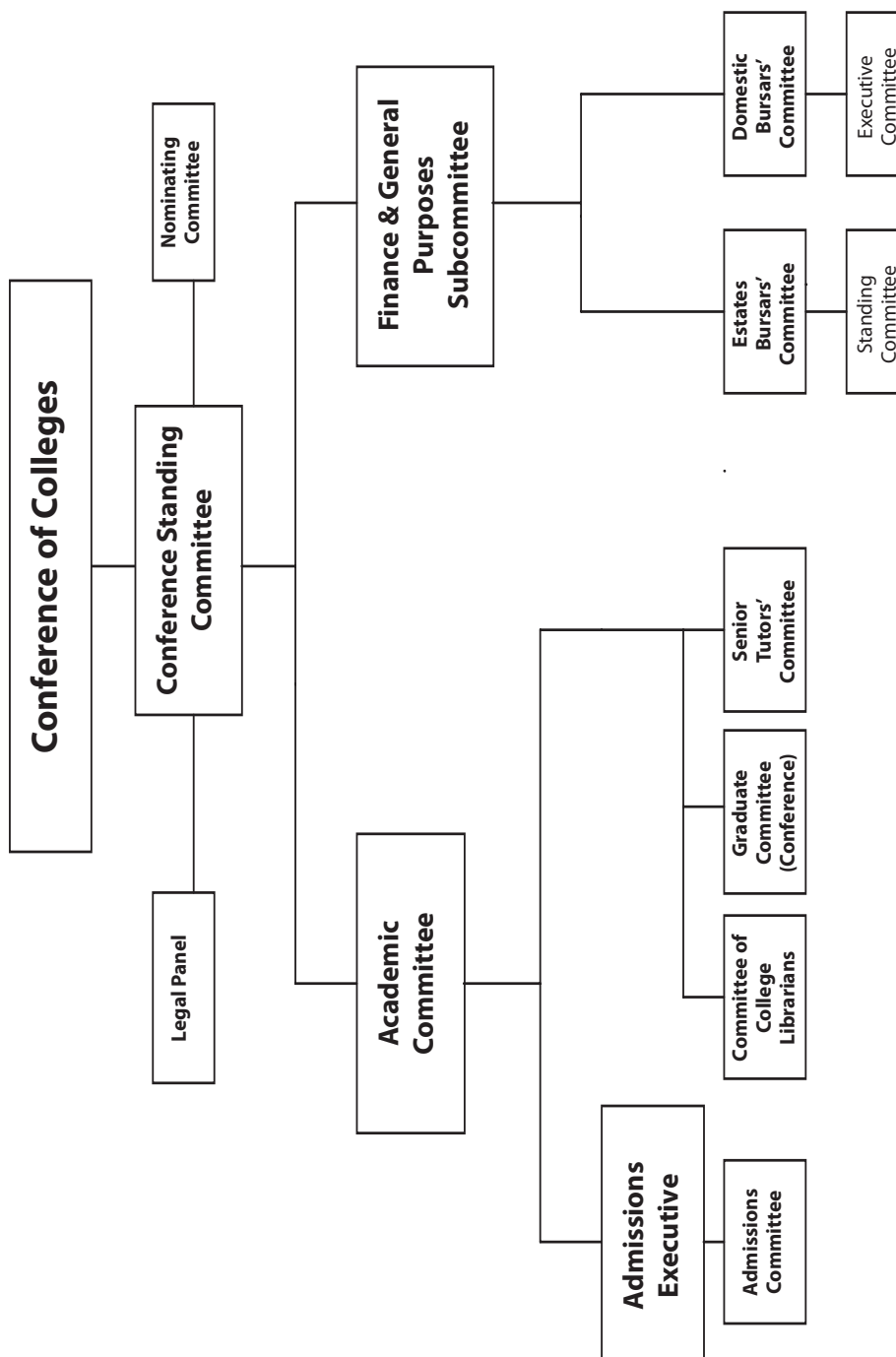
## Annexe A1

### Outline of the University's current governance structure



## Annexe A2

### Outline of Conference of Colleges committee structure



## **Annexe B**

UNIVERSITY OF OXFORD

### **Proposed governance changes**

**JOINT OPINION**

1. In this Joint Opinion we summarise the advice on charity law which we gave to the Working Party at the meeting in the University Offices on 19th April 2005.

2. The University is a self-governing civil corporation. Its main objects have been restated in Statute I of the code of statutes which came into force on 1st October 2002 as –

*‘... the advancement of learning by teaching and research and its dissemination by every means’*  
[Stat. I. s.3].

These objects are charitable objects, and the University has always been regarded as a charitable corporation.

3. The persons who are responsible for the government or management of a charitable corporation are treated as a matter of law as being in the same position as that of trustees properly so-called, appointed under the terms of a charitable trust. They are bound by the same fiduciary duties. They must ensure that the income and capital of the charity are expended responsibly and in accordance with its objects just as much as if the legal ownership of the charity’s property were vested in them and held on trust by them: see *Danckwerts J in Re French Protestant Hospital* [1951] 1 Ch 567 at 570–571.

### Charities Act 1993

4. The principal Act of Parliament which regulates the activities of charities is the Charities Act 1993. It imposes upon charities in general extensive duties of registration and accounting, and their activities are subject to the supervision of the Charity Commissioners. These statutory duties are to be performed by ‘charity trustees’, defined in section 97(1) of the Act as –

*‘... the persons having the general control and management of the administration of a charity.’*

Where the charity is a corporation its governors or managers will be the ‘charity trustees’ for the purposes of the Act.

5. Under the 1993 Act the University is an ‘exempt charity’: see section 96 and Schedule 2 para 2(b). It is

therefore exempt from many of the special controls laid down in the Act: registration, the investigatory powers of the Commissioners, restrictions on the disposal or mortgaging of property, and the filing of accounts with the Commissioners. In respect of accounts the charity trustees of exempt charities enjoy the benefit of the less stringent regime set out in section 46 (a general duty to keep and retain proper accounts).

### The Charities Bill

6. A Charities Bill was introduced into the last Parliament and may be reintroduced into the next Parliament. If this Bill, or something in this form, were to become law its principal effect, so far as exempt charities are concerned, would be to subject their charity trustees to closer regulation and scrutiny: see clauses 12 and 13 and Schedule 5. The Bill expressly adopts the definition of ‘charity trustee’ and ‘exempt charity’ set out in the 1993 Act (cl.13(4)), but provides for the appointment of a ‘principal regulator’ to ensure that the charity trustees of exempt charities comply ‘with their legal obligations in exercising control and management of the administration of the charity’ (cl.13(2) and (3)). The last Government intended to appoint HEFCE as the principal regulator of higher education institutions.

### The University’s current constitution

7. Under the present constitution of the University it is our view that Council is now and would, if the proposed Bill ever came into law, continue to be the University’s statutory charity trustees, its members having ‘the general control and management of the administration of’ the University. We take this view despite the fact that, under the Statutes, only Congregation can authorise changes in the Statutes (subject in certain circumstances to the approval of Her-Majesty-in-Council under the provisions of the Universities of Oxford and Cambridge Act, 1923) and may, under section 2(1) of Statute IV, pass resolutions binding the whole University, including Council.



## The proposals in the Green Paper

8. The proposals contained in the Green Paper involve principally the establishment of a Board, to be called the Board of Trustees, which will take over the powers currently exercised by Council. A new Academic Council will be appointed as the Board's delegate to discharge those of the current Council's functions which are most closely connected with the strictly academic activities of the University: academic planning, capital and revenue budgeting, the supervision of divisions, faculties and departments, research and the admission and education of students. The precise terms of reference of the Academic Council are still under consideration, but in respect of the discharge of its duties the Academic Council will be accountable to the new Board, which in its turn will be accountable to Congregation. Constitutionally it will parallel the current committees of Council, although it is intended to enjoy much larger autonomy in practice.

9. It therefore seems to us that, subject to a final resolution of the relationship between the Board and the Academic Council, the Board will qualify as the University's statutory charity trustees under the new regime, both for the purposes of the Charities Act 1993 and under the terms of the Bill (if it were revived) just as much as the Council does at present.

## Good practice

10. The Green Paper identifies as one of the main objectives to be pursued in reforming the governance of the University the need to follow best practice. Paras. 16, 20 and 32 all emphasise this in different terms.

11. This leads to the question as to what is currently regarded as best practice in the composition of the governing body which is to fulfil the role of the statutory charity trustees. In approaching this question the overriding consideration is the range and nature of the activities which the charity undertakes, the value and complexity of the financial and physical assets which it owns, and the internal and external pressures and constraints which influence the way in which it operates. We note that in discussion some comparisons have been drawn

between the University and its colleges. These comparisons are in our view unconvincing. The modern University, in all its different aspects, is an undertaking which bears no comparison with the colleges. For a similar reason it is also unhelpful, in our view, to place great emphasis on systems of governance which have served the University in the past. Teaching and research are now conducted on a considerable scale across an extensive estate. These are the central activities which make the University a charity. They are supported by a formidable financial and managerial substructure. In addition the University is enriched by other assets of great worth: the libraries, museums and scientific collections; the Press; intellectual property rights derived from research; historic buildings, the Parks, Botanic Gardens and other property open to the public. These are just examples. The central question is: what is the array of skill, knowledge and experience which the principal executive body must possess now which will ensure that the management of this enterprise is placed in the best hands?

12. As to the best practice to be followed generally by universities in constituting their central governing body we note that in recent years the Privy Council, whenever it has had occasion to consider the composition of Oxford's Council, has consistently taken the view that it should include more lay members (i.e. individuals who are not members of the resident academic community). In the Privy Council's letter to the University dated 12th June 2002, commenting on the increase of the lay members of Council from two to four, it was said that –

*'Ideally [the Privy Council's] advisers would of course like Oxford to work towards having a lay majority on their Council.'*

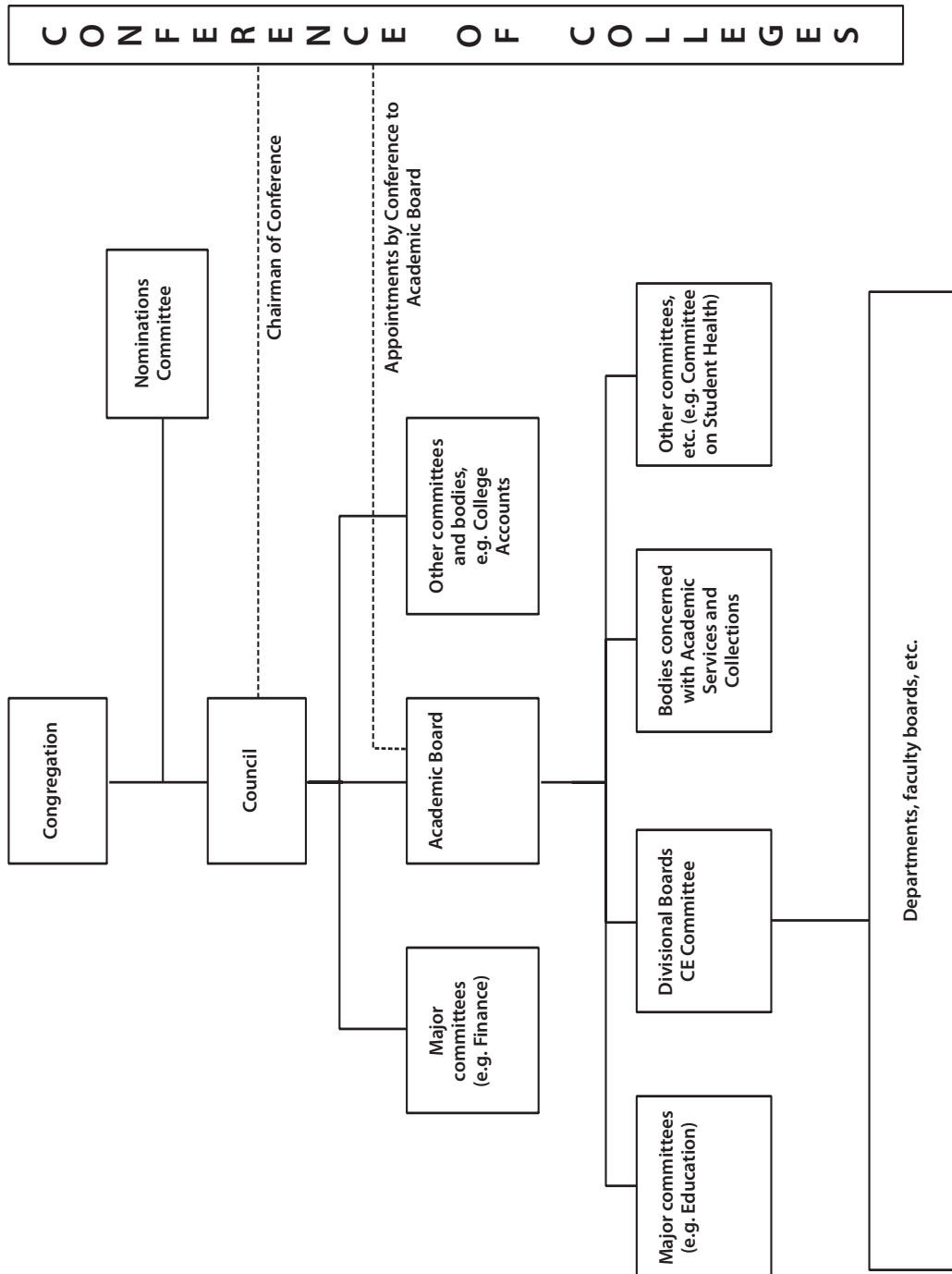
It is likely that this pressure will continue to be exerted whenever that is possible, and the same view is likely to be taken by HEFCE if it ever became the University's principal charity regulator.

13. This attitude is also reflected in the Governance Code of Practice recently issued by the Committee of University Chairmen (November 2004) which we understand has been adopted as a general guide by HEFCE.



# Annexe C

## Outline of the proposed new structure



## Annexe D

### STATUTE VI (DRAFT)

#### COUNCIL OF THE UNIVERSITY, ACADEMIC BOARD AND OTHER COMMITTEES

##### Part A: Council of the University

1. (1) There shall be a Council of the University called in the statutes and regulations “Council”.
  - (2) Council shall be responsible under the statutes for the general control and management of the administration of the University and shall have all the powers necessary for it to discharge its responsibilities.
  - (3) Council shall have the power and (if instructed to do so by a resolution passed under section 1(2) of Statute IV) the duty to submit to Congregation proposals for amending, repealing or adding to the statutes.
  - (4) In the exercise of its functions and powers Council shall be bound by all resolutions passed by Congregation and all other acts done or decisions taken by Congregation in accordance with the statutes and regulations, and shall do all things necessary to carry them into effect.
- (15) the Vice Chancellor.
4. Any member of Council who is otherwise not entitled to be a member of Congregation shall be a member of Congregation for so long as he or she is a member of Council.

##### Appointment of members of Council

5. The lay and academic members of Council shall be elected by Congregation and may be re-elected or removed from office in accordance with section 6 and Part B of this Statute.

##### Term of office, reappointment and removal

##### Membership of Council

3. The membership of Council shall consist of –
  - (1)–(8) 8 persons who at the date when they are first elected are not and are not entitled to be members of Congregation (called “the lay members”);
  - (9)–(13) 5 persons who are employed as members of the teaching or research staff of the University or a college or as the head of a college (called “the academic members”);
  - (14) the chairman for the time being of the Conference of the Colleges; and
  - (15) the Vice Chancellor.
6. (1) The lay members of Council shall serve for a term of five years, and may be re-elected to serve one further term of five years but their membership shall automatically cease when they reach the age of 75.
  - (2) The academic members of Council shall serve for a term of five years, and may be re-elected to serve one further term of 5 years but their membership shall automatically cease when they cease to be employed as a member of the teaching or research staff of the University or a college or (as the case may be) the head of a college.
  - (3) Any lay or academic member of Council may be removed from office by Congregation for misconduct or neglect of duty in accordance with section 27 below.
  - (4) Casual vacancies arising in the membership of Council for any reason shall be filled by Congregation in accordance with Part B of this Statute.

- (5) A member elected to fill a casual vacancy shall serve for the balance of the term being served by the member whom he or she replaces and shall be eligible for appointment and re-appointment as if he or she were elected as a new member at the expiry of that term.
7. The provisions of sections 3 to 6 inclusive are modified by the transitional provisions of section 8 below.
- (2) A member of Council (except the Vice-Chancellor and the chairman of the Conference of the Colleges) may be paid a reasonable emolument for his or her services as a member of Council.
- (3) The amount of expenses or any emolument payable under this section shall be decided by the Nominations Committee.
- (4) A member of Council may act as an officer or employee of any corporation (or of any subsidiary of a corporation) the securities of which are assets of the University and may retain any remuneration or other benefits which he or she may receive by virtue of that office or employment notwithstanding that any votes or other rights attaching to those securities have been instrumental in procuring or maintaining that member in that office or employment.

### **Transitional provisions**

8. (1) During the first five years after this Statute comes into force Lord Patten of Barnes shall be a member of and chairman of Council.
- (2) For so long as Lord Patten of Barnes is a member of Council the number of lay members shall be reduced from 8 to 7.
- (3) The lay members of Council to be first elected to serve after this Statute comes into force shall serve for terms of three years (2 members) five years (2 members) and seven years (3 members) as may be determined by the Nominations Committee referred to in Part B of this Statute.
- (4) The academic members of Council to be first elected to serve after the passing of this Statute shall serve for terms of three years (one member) five years (2 members) and seven years (2 members) as may be decided by that Committee.
- (5) After the expiration of their first term of office the members referred to in sub-sections (3) and (4) above may be re-elected in accordance with section 6(1) or (2) above as the case may be.

### **Expenses, remuneration and benefit**

9. (1) A member of Council may be reimbursed any reasonable and proper expenses including travelling expenses incurred by him or her in carrying out his or her duties.

### **Chairman**

10. Except where section 8(1) applies, the Nominations Committee shall appoint a chairman of Council from among the lay members.

### **Secretary**

11. The secretary of Council shall be the Registrar.

### **Conduct of business**

12. (1) A meeting of Council shall not be quorate unless both (a) the lay members present form a majority and (b) the total number of members present exceeds ....
- (2) Where there is a quorum at a meeting of Council any decision shall be taken by a majority of the members present and voting on it, and in the case of equality of votes the Chairman shall have a casting vote.
- (3) Members shall not be entitled to determine that a larger number is required to be present at a meeting for a decision to be taken by a majority of members.

- (4) Subject to sub-sections (1) to (3) above Council may lay down the procedure for the conduct of its business by regulation, standing order, or otherwise as it thinks fit.

13. Council may determine by regulation or standing order that if a lay or academic member has attended fewer than a prescribed number of meetings in any academic year, his or her membership of Council shall end at the close of that year.

### Attendance at meetings

14. (1) One of the Proctors or the Assessor and the Chief Finance Officer of the University shall have the right to attend meetings of Council but shall not be members of it and shall not have the right to vote.
- (2) Council may invite other persons to attend any meeting or a part of any meeting as it thinks fit.

### Power of delegation

15. (1) Subject to the provisions of the statutes and regulations Council may from time to time delegate responsibility for any matter to any other body or person and may delegate such powers (other than the power to put statutes to Congregation) as it may consider necessary for the discharge of this responsibility, but any such delegation may be withdrawn (either generally or in respect of a specific item) at any time, nor shall such delegation relieve Council of the general responsibility for the matters delegated.
- (2) Any body to which or person to whom Council has delegated responsibility and powers under sub-section (1) above may, unless Council otherwise determines, sub-delegate them to another body or person.

### Regulations

16. Council shall have the power to make regulations not inconsistent with the statutes.
17. Council may authorise any other body or person to make regulations not inconsistent with the statutes,

or with regulations made by Council, dealing with such matters as Council shall think fit to delegate.

18. Regulations made under section 16 or 17 of this statute may:

- (1) be designed to give detailed effect to the statutes; or
- (2) provide for any matter not provided for in the statutes.

19. (1) Regulations made under section 16 or 17 of this statute may at any time be annulled, amended, or repealed by Council by regulation.

- (2) A body to which or person to whom the power to make regulations has been delegated under section 17 of this Statute may unless Council otherwise directs annul, amend or repeal regulations made by that body or person.

- (3) The power to annul, amend or repeal regulations under this section shall not apply to regulations made by the Rules Committee under Statute XI unless Council is required to do so by a resolution of Congregation.

20. (1) All regulations made under sections 16 and 17 of this Statute and the annulment, amendment or repeal of any such regulations shall be published in the *University Gazette* and shall come into force from the fifteenth day after the date of their publication (though a regulation may contain an earlier or later date from which it comes into force), unless notice of a resolution to be put to Congregation opposing a proposed regulation or a proposed annulment, amendment or repeal of any regulation is received by the Registrar by noon on the eleventh day after the day on which it was published.

- (2) If such notice is received, the regulation or annulment, amendment or repeal shall not come into force until it has been approved by Congregation.

21. (1) Regulations and amendments to regulations made under this Statute shall bind all members of the University.

- (2) Council or, in a case falling within the delegated authority of the Academic Board referred to section 30 below, that Board may however by a resolution carried by a vote of not less than two-thirds of the members present and voting, suspend the operation of any regulation to cover a specific case.
- (3) Council may authorise any other body or person to suspend the operation of any regulation to cover a specific case.
- (4) The provisions of sub-sections (2) and (3) above do not apply to regulations made by the Rules Committee under Statute XI.

### **Part B: Appointment and remuneration of members of Council and removal from office**

- 22. This Part lays down the rules for the election re-election remuneration and removal from office of the lay and academic members of Council.
- 23. (1) To carry this Part into effect there shall be a Nominations Committee which shall be responsible for submitting to Congregation –
  - (a) nominations of persons to serve as the lay and academic members of Council;
  - (b) any recommendation that a lay or academic member of Council be reappointed; and
  - (c) any recommendation that a lay or academic member of Council be removed from office for misconduct or neglect of duty.
- (2) The Nominations Committee shall decide upon the first term of office of the lay and academic members referred to in section 8(4) and (5) above.
- (3) The Nominations Committee shall also decide upon the payment of any expenses or emolument to the members of Council or any of them in accordance with section 9 above and the amount decided upon shall be paid without further authorisation.
- 24. Any academic member of Council may be relieved of such of his or her university duties, without loss of stipend, as the Nominations Committee shall determine and that Committee shall be empowered to make such financial provision as it thinks fit for the carrying out of any of the duties of which such person has been relieved either by it or by his or her college, society or Permanent Private Hall.
- 25. The members of the Nominations Committee shall be –
  - (1) the Chancellor (chairman);
  - (2) the High Steward;
  - (3) one former Vice-Chancellor of the University invited to serve by the Chancellor;
  - (4) one Vice-Chancellor of another University within the United Kingdom invited to serve by the Chancellor; and
  - (5)–(7) three (or, if no former Vice-Chancellor of the University is willing or able to serve, four) members of Congregation elected by Congregation to serve for a period of five years without the right of reappointment.
- 26. (1) Candidates for election by Congregation as members of the Nominations Committee must be nominated by six or more members of Congregation.
- (2) The election shall otherwise be conducted in accordance with regulations made under section 6(1) of Statute IV.
- (3) The members of the Nominations Committee who are first elected by Congregation to serve after the passing of this Statute shall serve for terms of three years (one member or, if no former Vice-Chancellor of this University is willing or able to serve, two members) four years (one member) and five years (one member), as

determined by the Chancellor, without the right of re-appointment.

27. The secretary of the Nominations Committee shall be the Registrar.

28. (1) The procedure for electing the lay and academic members of Council shall be conducted by the Nominations Committee in accordance with this section.

(2) Not less than ... months or in the case of emergency within a reasonable time before a vacancy on Council has to be filled the Nominations Committee shall by advertisement in the *University Gazette* invite written nominations to be signed by not less than six members of Congregation of candidates to serve as lay and academic members and the advertisement shall state a closing date by which nominations must be received.

(3) The Nominations Committee shall have the power to invite six or more members of Congregation to propose by the closing date candidates named by the Committee to stand in the election.

(4) References to 'members of Congregation' in sub-sections (1) and (2) above do not include any member of the Nominations Committee.

(5) After the closing date the Nominations Committee shall consider all the

nominations it has received, select from them not more than one candidate to fill each vacancy, and propose those candidates or that candidate for election by Congregation.

(6) Congregation shall be invited to vote in the election for or against each candidate separately, so that any candidate who receives a majority of votes for him or her shall be elected and any candidate who receives a majority of votes against shall not be elected.

(7) If a candidate is rejected by Congregation it shall be the duty of the Nominations Committee to propose a further candidate or candidates nominated to it by not less than six members of Congregation, if necessary by readvertising the vacancy in the *University Gazette* within a timescale which is reasonable in all the circumstances, until each vacancy is finally filled.

(8) Except as provided in this section the election shall be conducted in accordance with regulations made under section 6(1) of Statute IV.

29. A proposal that a member of Council be removed from office shall be submitted to Congregation as a resolution moved by the Nominations Committee in accordance with Statute IV.

### Part C: Academic Board and other committees

#### Academic Board

30. There shall be an Academic Board which as a committee of Council shall discharge the following functions –

- (1) formulating and continually reviewing the academic objectives and strategies of the University and its corporate plan;
- (2) overseeing the teaching and research activities of the University and the provision of services related to those activities;

(3) formulating and overseeing policies relating to the selection and education of undergraduate and graduate students;

(4) promoting research;

(5) arranging for the appointment, terms of contract and remuneration of the academic and non-academic staff of the University;

(6) preparing for submission to Council annual budgets for all spending sectors and plans for capital expenditure;



- (7) monitoring and controlling capital and current expenditure within the budgets approved by Council;
- (8) discharging such other functions as Council may delegate to the Academic Board by regulation.
31. (1) The chairman of the Academic Board shall be the Vice-Chancellor.
- (2) The other members of the Academic Board shall be the following members of Congregation –
- (1)–(5) the Pro-Vice-Chancellors with portfolios;
- (6)–(10) the Heads of the Divisions;
- (11)–(13) the Proctors and the Assessor;
- (14)–(23) 10 members elected by the Conference of Colleges;
- (24)–(33) 10 members elected by Congregation;
- (34)–(35) 2 student members.
- (3) The 10 members of Congregation referred to in sub-section (2) above shall be elected from the following –
- 3 members of the Life and Environmental Sciences or Mathematical and Physical Sciences or Medical Sciences Divisions;
- 3 members of the Humanities or Social Sciences Divisions;
- 3 members of Congregation generally;
- 1 person who is a member of the University's contract research staff.
- (4) The secretary of the Academic Board shall be the Registrar.
32. The Academic Board shall regularly submit to Council for its consideration reports on its proceedings and its decisions on matters for which it is responsible at such intervals as Council shall require.
33. (1) Council after considering a report or decision of the Academic Board may approve it or make any other decision or give any directions to the Academic Board which it thinks fit.
- (2) In making any decision on any matter submitted to it by the Academic Board Council -
- (a) shall not substitute its own judgement for that of the Academic Board on any question which involves an assessment of academic merit; and
- (b) shall in all cases give proper weight to the expertise of the Academic Board.
- (3) A decision of Council under sub-section (1) of this section shall be binding upon the Academic Board.
34. The Academic Board shall have the power to make regulations on any matter relating to the functions which have been delegated to it which are not inconsistent with the statutes or regulations made by Council, and the provisions of sections 18 to 20(1) inclusive of this Statute shall apply to those regulations.
35. The Academic Board may authorise any other body or person to make regulations on any matter on which it is entitled to make regulations itself under section 34 of this Statute which are not inconsistent with the statutes or regulations made by Council and the provisions of sections 18 to 20(1) inclusive of this Statute shall apply to regulations made by any such person or body.
- Committees**
36. (1) Council and the Academic Board may set up such standing or temporary committees as they may from time to time think fit to which they may wish to delegate their respective functions.
- (2) These committees may consist wholly or partly of persons who are not members of Council or (as the case may be) of the Academic Board or who are appointed by

persons or bodies other than Council or (as the case may be) the Academic Board.

37. The composition, terms of reference, powers and duties of committees set up under section 36 of this Statute shall be laid down by Council or (as the case may be) the Academic Board by regulation or otherwise as they shall think appropriate, subject to the provisions of the statutes and regulations.

38. (1) The Registrar shall publish annually a list of all the current committees which have been set up under section 36 of this Statute, and shall on request supply to any member of Congregation details of their terms of reference and current membership.

(2) The Registrar shall also on request supply details of the current membership of all other committees set up by statute or regulation.

### Part D: Transitional provisions

39. Regulations made by Council of the University established under the Statute VI which came into force on 1 October 2002 or by any body or person authorised by that Council to make regulations shall

continue to be effective and binding upon the University unless and until Council referred to in section 1 of this Statute decides otherwise.

### Explanatory Notes

**It is envisaged that the present Statute VI would be repealed in its entirety and replaced by the new Statute. These notes point out the changes which are being made and indicate the current provisions which would be continued. The text of the existing Statute VI may be found on the University's website.<sup>6</sup> It is recognised that, if the changes proposed in the governance structure are made, there will be significant other changes in legislation.**

#### General

The present Statute VI establishes the existing Council and its four main standing committees; and it entitles Council to establish further committees. It is divided into 23 sections. Sections 1 to 18 inclusive, which deal with the main functions and powers and the composition of Council, are 'Queen-in-Council' provisions. The remaining sections, dealing with more detailed matters, including the committees of Council, are not.

The proposed new Statute is divided into four Parts: A, B, C and D. Part A establishes the new Council (referred to in earlier discussions as the Board of Trustees) which will replace the existing Council.

Part B is concerned with the new Nominations Committee which will have responsibility for nominating to Congregation candidates for membership of the new Council, and their re-appointment, remuneration and removal; and it sets out the procedures to be followed. Part C deals with the new Academic Board (referred to in previous discussions as the Academic Council) which will take over responsibility for academic matters subject to the overall supervision of the new Council. Part D contains transitional provisions.

Part A (sections 1 to 21) is the direct replacement of sections 1 to 18 of the existing Statute VI, and will require Queen-in-Council approval. Parts B, C and D may not require approval, although it may be anticipated that the Privy Council and its advisers will look at the way in which candidates for membership of the new Council emerge via the Nominations Committee and will be interested in the relationship between Council and the Academic Board.

#### Section 1

This section reproduces in spirit but not in terms section 1 of the existing Statute. The description of

<sup>6</sup> [www.admin.ox.ac.uk/statutes/783-121.shtml](http://www.admin.ox.ac.uk/statutes/783-121.shtml).

the new Council's functions in sub-section (2) has been adapted to incorporate exactly the words of section 97(1) of the Charities Act 1993, to make it clear that it is intended that the new Council shall be the University's 'charity trustees'. Section 1(3) makes explicit that which is implicit in the existing Statute VI.

## Section 2

This repeats section 2 of the existing Statute VI, placing the new Council under the control of Congregation on exactly the same terms as the present Council.

## Section 3

This section reflects the intention that the new Council will have a mixed membership with a lay majority, subject to the transitional provisions set out in section 8.

## Section 4

All members of the new Council should be entitled to put resolutions to and speak and vote in Congregation.

## Sections 5 and 6

These sections reflect the intention stated in para. 36 of the Green Paper (and repeated in the current document) that the members of the new governing body will be elected by Congregation. Only two are members *ex officio*. The member who is the chairman of the Conference of Colleges and the Vice-Chancellor will be excluded from these procedures. Fourteen of the twenty-five members of the current Council are elected.

## Sections 7 and 8

During a transitional period of five years Lord Patten will chair Council in his personal capacity, reducing the lay membership by one.

The lay and academic members of Council first elected to serve will serve unequal periods of office initially, to ensure that there will be a regular two-

yearly turnover in membership of between three and five members, subject to their right to be re-elected.

## Section 9

The inclusion of a majority of lay members makes it necessary to ensure that they are paid their out-of-pocket expenses and (in appropriate circumstances) receive a reasonable emolument for services rendered. Sub-section (4) is necessary to ensure that a candidate for lay membership is not disqualified because the University happens to own shares in the company by which he or she is employed.

## Section 10

The appointment of the chairman, after the expiry of the transitional period, will be in the hands of the Nominations Committee and not that of Council.

## Sections 11 to 13

These sections are self-explanatory. Section 12(1) reproduces section 19 of the existing Statute and section 13 reproduces the existing section 10.

## Section 14

This section is self-explanatory.

## Section 15

This section reproduces section 3 of the existing Statute VI. Trustees, or those in the position of trustees, may delegate their functions if the instrument under which they are appointed authorises them to do so: see *Pilkington v IRC* [1964] AC 612 per Viscount Radcliffe at 638-639. Section 3 is within the "Queen-in-Council" part of the existing Statute and has been approved. The new section 15 falls within Part A of the new Statute which is also a "Queen-in-Council" provision.

## Sections 16 to 21

These sections reproduce sections 13 to 18 inclusive of existing Statute VI.

### Sections 22 to 29

These sections establish the Nominations Committee and give it the functions described in paragraph 36 of the Green Paper, expanded in accordance with more detailed advice and discussions which have taken place since its publication. The detailed procedures laid down in section 28 are designed to give members of Congregation an expanded role in the decision-making processes of the Nominations Committee compared with the original proposal.

### Sections 30 to 35

These sections establish the new Academic Board and are entirely new. The underlying purpose of the creation of the Academic Board is to expose academic decision-making to a much wider constituency of participants. Attention is drawn in particular to the provisions of sections 32 and 33. The new Statute strikes a balance between maintaining the identity of Council as the University's statutory charity trustees and the autonomy of the Academic Board in academic matters. An outright delegation of responsibility for academic matters by Council to the Academic Board would deprive Council of any effective control over the activities which make the University a charity. Not only would this undermine Council's claim to be the statutory charity trustees but it would also be contrary to good practice. However, a distinction may be drawn between charity trustees, who have 'general' control and management of the administration of the charity, and its committees which, subject to the duty of reporting, have 'detailed' control over specific areas. It is this balance which these sections seek to maintain. The Academic Board is the only statutory standing committee of the new Council. The four major committees of Council under the existing Statute would be re-constituted (under the current proposals) by the Academic Board under section 36.

### Sections 36 to 38

These sections reproduce sections 20 to 23 inclusive of the existing Statute VI, adapted to reflect the arrangements described in paras. 24 and 37 of the Green Paper.

### Section 39

This provision is inserted for the avoidance of doubt, and is intended to relieve the new Council of the burden of re-enacting all Council Regulations currently in force.

### Summary

In constitutional terms the effect of the new Statute VI can be summarised as follows. The existing Council, which has a small minority of lay members, is replaced by a new Council which (after a transitional period) will have a majority of lay members; but it has exactly the same powers and functions as the existing Council, and is subject to the same control by Congregation. Fourteen members of the present Council are approved or elected by Congregation. All of the lay and academic members of the new Council will be elected by Congregation, via an intermediate process in the hands of the Nominations Committee; but that Committee cannot promote candidates who do not have the support of at least six members of Congregation.

The Academic Board will be the new Council's delegate in charge of the academic affairs of the University. Under the statutes it ranks in parallel with the four standing committees of the existing Council which, as statutory committees, will be abolished under the current proposals and reconstituted as committees of the Academic Board; but it is given greater authority and influence: see section 33(2). Apart from the special case of the Academic Board both the new Council and that Board can develop their own committee and sub-committee structures.

## **Annexe E**

UNIVERSITY OF OXFORD

### **Proposed governance changes**

**Appointment, remuneration and removal of members of the  
Board of Trustees**

**JOINT OPINION**

1. This Joint Opinion is supplemental to our Joint Opinion dated 10th May 2005. We have been asked to set out our advice on the appointment, remuneration, reappointment and removal of the members of the proposed Board of Trustees. The advice which we give is not greatly affected by the composition of the Board, i.e. whether it consists wholly of outsiders or of a mixture of outsiders and resident members of the academic staff.

2. We would like to make a preliminary comment about the description of the Board members as 'trustees'. They will not be trustees in the sense in which that word is usually understood. That is to say they will not be the legal owners of trust property, holding it on charitable trusts for the University. The University as a charitable corporation is the absolute legal owner of its own property. In addition it is itself the trustee of some 460 trust funds, which are mainly devoted to academic purposes, but form a fraction of the total assets within the University's ownership: see Stat. XVI ss. 1 and 16. The members of the Board will be 'charitable trustees' only in the special meaning given to that expression by the Charities Act 1993. But the Board and their members will be in the same fiduciary relationship with the University as trustees properly so called, and our advice is based on that understanding.

### **Appointment and removal of Board members**

3. Para. 36 of the Green Paper deals with the appointment of the members of the Board. The first group will be elected by Congregation, having been selected and proposed by a committee comprising the Chancellor, High Steward, some former Vice-Chancellors and distinguished alumni. They will serve for 7 years, and will be reappointable, subject to an upper age limit of 70.

4. The suggested procedure for filling vacancies needs to be clarified. Para. 36 also states that 'The Trustees would themselves be responsible for filling vacancies in their number but all Trustee appointments would be subject to the approval of Congregation'. We interpret this to mean that the Board members will propose individuals for re-

appointment or to fill vacancies (casual or otherwise), but only Congregation can formally elect them.

Trustees under the terms of private or charitable trusts commonly appoint their successors, but it is not in our view satisfactory for the University to leave the nomination of individuals to these highly important positions in the hands of what might become a self-perpetuating group, whether it consists entirely of outside members or of a mixture of members of the academic staff and outsiders. It would be better practice in our opinion to give to the Chancellor's committee referred to in para. 3 above the power to nominate Board members for reappointment (if they think fit), and to nominate individuals to fill vacancies.

5. The University will also have to put in place a system for the removal of Board members in cases for example of misconduct or neglect of duty, such as failure to attend meetings. This is another function which in our opinion should be placed in the hands of the Chancellor's committee, which would be able to monitor the performance of Board members and impartially investigate any complaints.

6. In nominating individuals for appointment or re-appointment, and in considering whether any member of the Board ought to be removed, the committee would of course take fully into account the views expressed by the Board itself; but it would not be bound by those views. Further, in every case the final decision would be in the hands of Congregation. This recommendation conforms with para. 2.49 of Part II of the Code of Practice issued by the Committee of University Chairmen, which we have adapted to reflect the special position occupied by Congregation under the University's constitution.

### **Remuneration**

7. In our view the University would be fully entitled in law to remunerate Board members for their services, if it wished to do so, and the new Statute contained provisions allowing it to do so. In this respect it might wish to make a distinction between those members who were salaried members of the University's academic staff and the outside members.

8. The general rule of law applicable to trustees (charitable or private) is that they do not have the power to remunerate or confer benefits upon themselves. The same is true of the governors or managers of a charitable corporation: see the *French Protestant Hospital* case referred to in our earlier Opinion.

9. This restriction has been carried to the point that professional trustees such as lawyers or accountants are not entitled to charge fees for services rendered to the trust. It was relaxed to an extent by sections 28 and 29 of the Trustee Act 2000; and clause 34 of the Charities Bill (which we believe is to be revived) makes further provision for the payment of charitable trustees for services rendered to the charity other than in their capacity as trustees. However these provisions are of limited application, and none of them has a bearing on the position of members of the proposed Board.

10. The general restriction on the remuneration of trustees does not apply in any case where the instrument creating the trust or constituting the corporation expressly permits trustees, or others in a fiduciary position, to be paid. The solution to the problem in the case of Oxford is accordingly in our opinion quite straightforward. The revised Statute VI, which will establish the Board, can make express provision for the remuneration, and the payment of expenses, to its members. It is not appropriate that the Board should determine its own remuneration, or set the criteria for the recovery of the expenses. This too should in our view be placed in the hands of the Chancellor's committee referred to under para. 3 above.

11. It is worth pointing out that a provision of this kind in a new Statute would be no different from what is found in the charter and statutes of every college. The Governing Body in each case consists of the Head of House and the Fellows. Without any doubt they are fiduciaries, and will be the college's statutory charity trustees. They are nevertheless, under their statutes, entitled to remuneration and other benefits, upon which they vote themselves. In doing so they must of course be mindful of their fiduciary position. They cannot act irresponsibly, or against the college's interests. But this regime has long been approved under successive Oxford and

Cambridge Acts. The regime which we have suggested is more cautious.

### The 1923 Act

12. This brings us to the final point. The changes which must be made to Statute VI to put these new arrangements into place must be submitted to and approved by Her Majesty in Council. Either they will be approved or they will not. We believe that a good case can be made for the payment of members of the Board, bearing in mind the heavy responsibilities which they will be undertaking, and the commitment of time they will have to make in order to discharge their responsibilities. The time taken up will not be limited to attendance at meetings. If there is no provision for remuneration of members of the Board some strong candidates may not find it possible to take up the appointment, and the pool of likely candidates will be limited to those who are in a position to give their time without payment. If the provisions for remuneration were set out along the lines suggested by us, the fixing of the amount of remuneration being left in the hands of an independent group, we would expect the Privy Council to approve the scheme. Once it received that approval under the 1923 Act it would in our view be immune from legal attack. If it did not that would be the end of the matter.

**Falcon Chambers**  
**Falcon Court**  
**London EC4Y 1AA**

**DEREK WOOD QC**  
**16th May 2005**

**Wilberforce Chambers**  
**8 New Square**  
**Lincoln's Inn**  
**London WC2A 3QP**

**JUDITH BRYANT**  
**16th May 2005**

## Annexe F

### Possible reporting relationships

This annexe lists the proposed major committees of both Council and the Academic Board as set out in the main text and also gives the working party's preliminary view of how reporting relationships for other bodies might be revised if the structure proposed in the consultative document were to be implemented. The bodies in (b) and (d) below all at present report to Council.

#### (a) *Proposed major committees of Council*

- General Purposes
- Finance
- Audit
- Investment
- Remuneration

#### (b) *Other bodies which might report to the new Council*

- \*Committee on Animal Care and Ethical Review
- \*Committee for the Proctors' Office
- \*Central University Research Ethics Committee
- College Accounts Committee (reporting via the Audit Committee)
- College Contributions Committee (reporting via the Finance Committee)
- \*Conflict of Interest Committee
- University Development Programme Scrutiny Committee
- Health and Safety Management Committee
- Managing Trustees of Oxford Staff Pensions Scheme (reporting via Finance Committee)
- Committee on Statutes before the Privy Council
- \*Committee on the University Statutes and Regulations
- Value for Money Committee (reporting via the Audit Committee)

If the proposed General Purposes Committee were set up, then the bodies marked with an asterisk might report to Council via that committee, although this would depend on the nature of the business.

#### (c) *Proposed major committees of the Academic Board*

- Education
- Budgeting and Capital Planning
- Personnel
- Research

#### (d) *Other bodies which might report to the Academic Board*

- Buildings and Estates Subcommittee (via Budgeting and Capital Planning Committee)
- Continuing Education Board (via Education Committee)
- Committee on Honorary Degrees
- Information and Communications Technology Committee
- Curators of University Libraries
- Committee for the Museums and Scientific Collections
- Committee for the Language Centre
- Committee for the Archives
- Committee on Student Health and Welfare
- Joint Committee with Student Members
- Clubs Committee
- Committee for the Careers Service
- Sports Strategy Committee
- Curators of the Parks
- Benefices Delegacy
- Delegacy for Military Instruction
- Curators of the Sheldonian
- Committee for the University Club



## Annexe G

### Draft terms of reference and membership of major committees of the Academic Board

All appointed members to serve for three years and to be re-eligible for one further and final period of three years.

Elected student members to serve for one year.

All co-opted members to serve for two years and to be re-eligible for one further and final period of two years.

The Proctors and the Assessor would be members of each of these committees.

The standing orders of the Academic Board (if not the regulations governing it) should contain the following provisions.

1. In making appointments to committees of the Academic Board, appointing bodies shall keep in mind

- (a) principles of equality and diversity;
- (b) the importance of choosing individuals whose expertise and interests closely match the remit of the committee in question.

2. The Academic Board and its committees must keep constantly in mind the importance of pursuing policies which are in the interests of the University and its colleges as a whole.

### Budgeting and Capital Planning Committee

The Budgeting and Capital Planning Committee shall consist of:

- (1) the Vice-Chancellor;
- (2) the Pro-Vice-Chancellor (Planning and Resources), who shall normally chair the committee;
- (3)–(5) three members of college governing bodies with relevant experience in finance and/or planning matters appointed by the Conference of Colleges;
- (6) one of the five heads of division as agreed among them;
- (7)–(10) four members of the Academic Board appointed by the Academic Board.

The committee may co-opt up to two additional members.

It shall be responsible for:

- (a) general oversight of the financial activities of the divisions and of the other major spending sectors, and the making of appropriate reports and recommendations on these matters to the Academic Board and thence to Council as appropriate;

(b) the preparation of annual operating budgets within the resources available and their recommendation to the Academic Board for submission to Council;

(c) the development of rolling plans for capital expenditure over a ten-year period for approval by the Academic Board and for submission to Council;

(d) the monitoring of capital expenditure and the making of reports on this to the Academic Board and thence to Council as appropriate;

(e) the assessment of the University's needs for additional resources and consequent advice to the Academic Board and Council on these needs;

(f) making recommendations to the Academic Board on other financial matters as necessary;

(g) assessing and monitoring the effectiveness of the committee in reaching decisions, in overseeing their implementation and in monitoring their outcome.

### Education Committee

The Education Committee shall consist of:

- (1) the Pro-Vice-Chancellor (Education) who shall chair the committee;
- (2)–(6) the heads of each of the divisions;
- (7), (8) two persons appointed by the Academic Board, not necessarily members of the Academic Board, who hold the office of either a head of department or a chairman of a faculty board;
- (9), (10) two members of college governing bodies with appropriate expertise appointed by the Conference of Colleges;
- (11), (12) two members appointed by the Academic Board from among its own members;
- (13) one member of the Department for Continuing Education appointed by the Continuing Education Board;
- (14), (15) two student members elected by the Council of the Oxford University Student Union, of whom one shall be a representative of undergraduate students and one a representative of graduate students.

The committee may co-opt up to two additional members.

It shall be responsible for:

- (a) overseeing the pursuit of the collegiate University's objective of providing an outstanding education for both undergraduates and graduate students;
- (b) determining the University's educational strategy to form part of the Academic Strategy and Corporate Plan;

(c) defining policy, standards and processes for undergraduate, graduate and part-time courses (including Continuing Education) in respect of:

- (i) access and admissions
- (ii) course design and structure
- (iii) teaching and assessment
- (iv) examinations
- (v) provision of learning resources
- (vi) pastoral support

(d) establishing mechanisms to improve the academic environment through monitoring and reviewing:

- (i) the implementation of agreed teaching and learning policies and activities
- (ii) the impact of policies and activities on the different areas of the University
- (iii) the quality of education provision
- (iv) the provision of staff development activities

(e) ensuring equal opportunities for students through the definition, implementation and monitoring of equal opportunity policies;

(f) co-ordinating and controlling the review processes for divisions;

(g) considering and reaching decisions on requests for individual dispensations;

(h) assessing and monitoring the effectiveness of the committee in reaching decisions, in overseeing their implementation and in monitoring their outcome.

The committee shall have power to make, amend and repeal regulations (etc. as in current regulation).

### Personnel Committee

The Personnel Committee shall consist of

- (1) the Pro-Vice-Chancellor (Personnel and Equal Opportunities) who shall chair the committee;
- (2)–(6) one member with appropriate expertise appointed by each divisional board;
- (7), (8) two members of college governing bodies with expertise in personnel matters appointed by the Conference of Colleges;
- (9)–(11) three members appointed by the Academic Board from among its own members.

The committee may co-opt up to six additional members, on condition that the committee shall always ensure by the use of its power of co-optation that the range of interests and concerns, including those relating to contract research staff, in the University is as fully reflected in the membership of the committee as is reasonably practical.

It shall be responsible for:

- (a) ensuring the development and implementation of personnel policies for all University staff, in support of the overall strategy of the collegiate University;

- (b) determining the University's Human Resources strategy in the context of the overall Academic Strategy and Corporate Plan;
- (c) ensuring the University's compliance with personnel law;
- (d) overseeing the personnel aspects of the planning process;
- (e) monitoring the effectiveness of, and compliance with, the University's personnel policies;
- (f) overseeing all centrally organised personnel exercises;
- (g) having responsibility for, and making recommendations to the Academic Board on, policy and practice with regard to joint appointments;
- (h) overseeing relations between the University and its employees;
- (j) overseeing equal opportunities policies and practices for employees of the University;
- (k) assessing and monitoring the effectiveness of the committee in reaching decisions, in overseeing their implementation and in monitoring their outcome.

The committee shall have power to make, amend, repeal regulations etc. (as now).

### Research Committee

The Research Committee shall consist of:

- (1) the Pro-Vice-Chancellor (Research) who shall chair the committee;
- (2)–(6) one person with appropriate expertise appointed by each divisional board;
- (7), (8) two members of college governing bodies with appropriate expertise appointed by the Conference of Colleges;
- (9)–(11) three members appointed by the Academic Board from among its own members.

The committee may co-opt up to three additional members on condition that at least two of the persons co-opted are members of the contract research staff. In considering co-optation the committee shall also keep in mind the need to ensure that the representation of subject areas on the committee is reasonable balanced.

It shall be responsible for:

- (a) ensuring an innovative and supportive environment to promote research excellence throughout the collegiate University;

- (b) determining the University's research strategy to form part of the Academic Strategy and Corporate Plan;
- (c) ensuring the sustainable utilisation of university resources in the maintenance and development of the research infrastructure;
- (d) overseeing the policies and procedures for full economic cost recovery for all externally funded research;
- (e) identifying and fostering links with external organisations to further collaboration and to increase the volume of successful external research bids;
- (f) reviewing research standards across divisions and departments and facilitating preparation for external reviews including Research Assessment Exercises;
- (g) overseeing interdivisional research activities including joint bids and joint initiatives;
- (h) managing the Research Development Fund;
- (i) overseeing the commercialisation of research, in particular the strategic management of intellectual property shareholdings and of Isis Innovation;
- (j) overseeing and monitoring all matters related to third-stream funding, including the preparation of submissions or reports as may be required by HEFCE.
- (k) overseeing, assessing and monitoring the effectiveness of the committee in reaching decisions, in overseeing their implementation and in monitoring their outcome.