Crowe Horwath.

Draft Report to

UNIVERSITY of LIMERICK
OLLSCOIL LUIMNIGH

Corporate Governance Review Stage 1:
Governing Authority

6th September 2017

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1   Introduction

1.1   General Introduction

Crowe Horwath is pleased to present this draft report to the University of Limerick ("UL" or "the University") for the provision of a corporate governance review. This report relates specifically to Stage 1 of our engagement by UL, focused on the Governing Authority.

A separate report will issue to the University in late October 2017, relating to Stage 2 of our engagement, which will focus on Corporate Governance Provisions.

1.2   Background and Context

1.2.1   Background

The University of Limerick was established in 1972 and became a university by statute in 1989. It has more than 11,000 full-time undergraduate students across four faculties, including nearly 2,500 international students, as well as in excess of 2,100 postgraduate students. UL is located by the River Shannon, 5km from Limerick city centre.

1.2.2   Context

Significant public investment underpins Irish universities. It is important to ensure that public funding and student contributions are used as effectively as possible to create a world-class teaching and learning environment. This requires a robust and coherent reporting and accountability framework to evidence efficiency and productivity gains across teaching, research, knowledge exchange, and in core operational areas.

The Universities Act 1997 identifies two statutory committees: a Governing Authority and an Academic Council. The former has the responsibility for ensuring that the functions of the university are performed within budgetary constraints while the latter has responsibility for the academic affairs of the institution.

The specification in the Act of the role for the Governing Authority concentrates on membership with particular emphasis on ensuring continuity with prior arrangements. It is light in relation to governance best practice. Consequently, it is a matter for individual universities to determine a code of best practice to be followed.

Globally, universities are dynamic organisations in terms of the structure, function, and sphere of operation. The extent of change in the past two decades has been rapid. Irish universities have undertaken a significant amount of innovation in this period. One manifestation of this change has been the balance between sources of funds. Irish universities are becoming increasingly diversified in their sources of funds. State entities in Ireland have historically been classified as "commercial state-sponsored bodies" and "non-commercial state-sponsored bodies", the distinction being drawn in respect to whether it is expected that a dividend will be paid to the state. It would not be appropriate to classify universities exclusively in either of these categories as aspects of operation could fall into one or the other. Over the coming years this reality will need to addressed at national level, with consequent implications for university governance and fiduciary management.

It is against this background – the need for universities to set their own code of governance given the paucity of direction in the Universities Act 1997 and the need for governance to evolve given rapid change since the commencement of the Act – that we will address the review of governance at the University of Limerick.

1.2.3 Governance Issues at the University

The backdrop to this review is a series of issues which has received significant media and political attention in recent months concerning expenses payments and wider HR policies at UL. We are cognisant of the fact that the newly appointed President of UL, Dr Des Fitzgerald, wrote to the Department of Education on his first day in office seeking an independent review of these matters, which is now being undertaken by Professor Richard Thorn, President Emeritus of Sligo IT.

We also note that the Higher Education Authority (which had appointed the accountancy firm Mazars to review various issues related to expenses at UL) has said that the allegations against UL are "broadly linked by a common theme of poor HR management practice within the university".

Furthermore, we understand that Dr Fitzgerald has also appointed Professor Mary O'Sullivan as Strategic Advisor to the President for Institutional Governance, which includes assisting him in his overall examination of the University's governance.

We have taken account of all of these various strands as part of the review process in line with the terms of reference for this assignment.
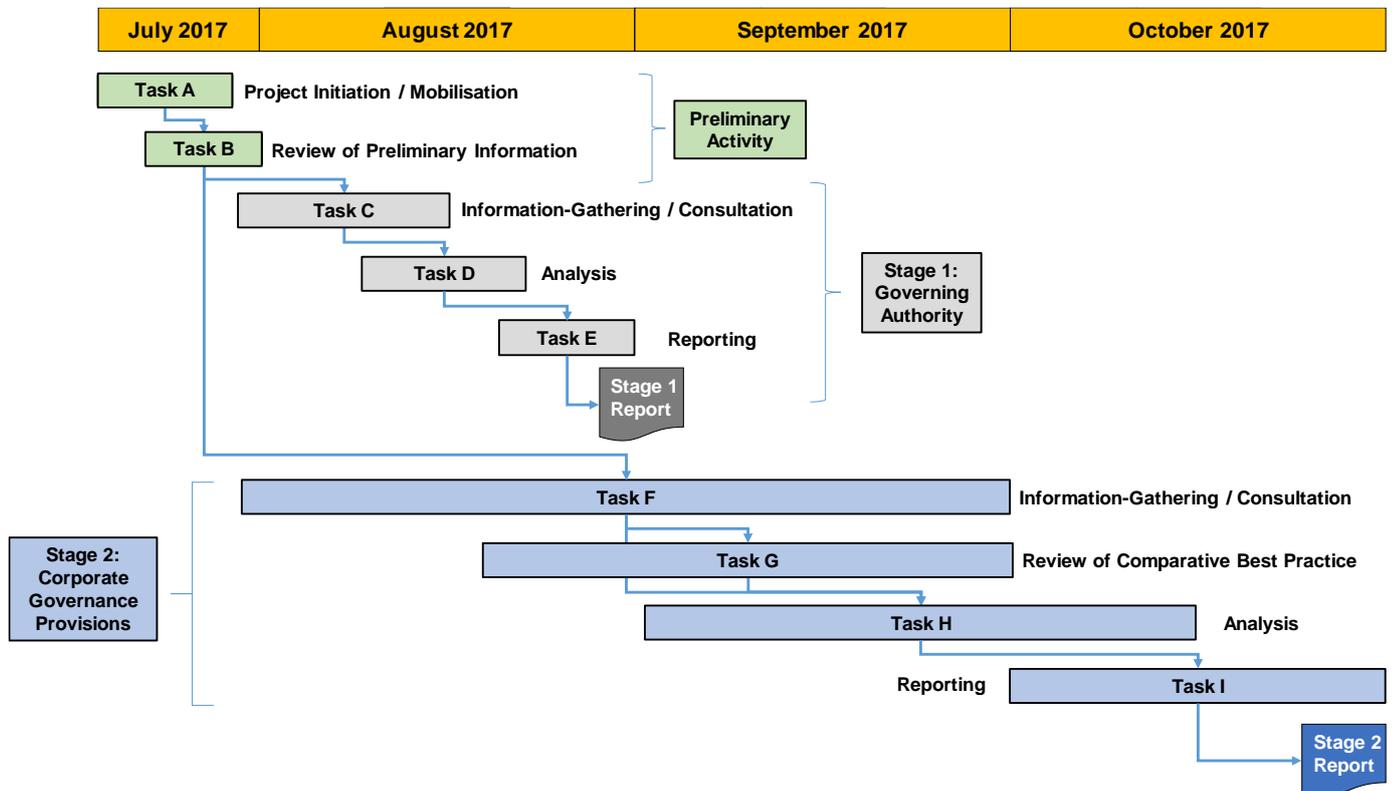
1.3 Terms of Reference

The terms of reference as set out in the Request for Tender (RFT) document are summarised below:

- **Stage One** *of the Review will centre on evaluating and advising on Governing Authority size, membership (including composition and appointment provisions) and term of office provisions against contemporary best practice in the area. Any such advice must take account of the provisions of the Universities Act, 1997.*

- **Stage Two** *of this Corporate Governance Review will focus on a range of areas that comprise the University's Corporate Governance provisions. It is planned that this Stage of the Governance Review will focus on the following areas:*

  - *Clarity and Assurance on the Role and Functions of Governing Authority (GA):*

  - *Governing Authority Committee structure*

  - *Responsibilities of Governing Authority*

  - *Self-Evaluation of Governing Authority*

  - *Any other areas of consideration deemed pertinent to contemporary good Corporate Governance Organisation and Practice.*

1.4 Method of Approach

1.4.1 Assignment Tasks and Timelines

Our project plan was developed to reflect the specific requirements and timelines set out by UL within the RFT, and is as follows:

July 2017	August 2017	September 2017	October 2017

Task A — Project Initiation / Mobilisation

Task B — Review of Preliminary Information

Preliminary Activity

Task C — Information-Gathering / Consultation

Task D — Analysis

Task E — Reporting

Stage 1 Report

Stage 1: Governing Authority

Stage 2: Corporate Governance Provisions

Task F — Information-Gathering / Consultation

Task G — Review of Comparative Best Practice

Task H — Analysis

Reporting — **Task I**

Stage 2 Report

1.4.2 Methodology Overview

We set out three main phases of the assignment within our methodology:

■ A **preliminary activity stage**, in which the project was initiated with UL, the consultancy team mobilised, and initial information was provided to the team to help us scope the nature of the work to be undertaken;

■ **Stage 1** has been a focused piece of work specifically related to the Governing Authority, resulting in the production of this report;

■ **Stage 2,** dealing with the broader range of corporate governance provisions at UL, is taking place in parallel with Stage 1 but involves greater depth across a wide spectrum of issues, and will conclude with the production of a final report to UL at the end of October 2017.

2 Comparative Research with Other Organisations

2.1 Scope of Comparative Research

We have focused our research on the university sector both in Ireland and internationally. This has been supplemented with a review of practice in a variety of organisations in Ireland. Our objective is to characterise international best practice in the governance of universities.

Quantitative data in respect of practice in universities is summarised in Tables 2.3.1a to 2.3.1c, where we report information for the size of governing bodies, their schedule of meetings, and the percentage of membership that is external to the university, i.e. members that are neither staff or students of the university.

The international comparator universities comprise:

- ■ the entire Russell group of universities in the UK;
- ■ a selection from the membership of Universitas21;
- ■ several others chosen for their standing and/or geographical or historical context.

Our sample is focused on leading global research universities whose funding basis is similar to that of Irish universities. The main sample is drawn from the UK but we have also included institutions in continental Europe, North America, Australia, New Zealand, and the Nordic countries.

2.2 Provisions of the Universities Act 1997

Section 16 of the Universities Act 1997 pertaining to the composition of the Governing Authority is reproduced in Appendix 1.

In respect of size, there is provision for governing authorities to range in size from 20 to 40 members. Specific conditions are set out with respect to representation from a variety of stakeholders in general, and the special circumstances of particular institutions. In respect of UL these pertain to representation from local authorities and the UL Foundation. The condition on associated institutions having representation also has an impact on UL in terms of representation from Mary Immaculate College (MIC).

Conditions to governing body membership are described in the Third Schedule of the Act. These details include provisions for appointment and suspension of membership along with terms of office.

Relevant Section of the Act describing Category of Membership	Category Description	Provision	Current Practice
2(a)	President	1	1
2 (c)	Senior Officers	≥1 ≤2	2
2 (d) i	Professorial Staff	≥2 ≤6	4
2 (d) ii	Other Academic & Research Staff	≥3 ≤5	5
2 (d) iii	Non-Academic Staff	≥1 ≤3	3
2 (d) iv	Undergraduates	≥2 ≤3	2
2 (d) iv	Postgraduates	1	1
Total			**18**

Table 2.2a: Universities Act Provisions for Internal Membership of the UL Governing Authority

The provisions for membership of the UL governing authority along with current practice (including any vacancies) is outlined in Tables 2.2a and 2.2b. There is considerable scope available to UL to determine the size and composition of its Governing Authority. At present the University has chosen to use the entire provision available – as in practice with respect to non-academic staff and the nominees of the UL Foundation. By contrast, in others the practice has not been to use the full provision – as with professorial staff and the nominees of organisations. It is not clear why these decisions have been made. In considering any alterations to the size and composition of the Governing Authority, it would be useful to outline the considerations influencing choice. In the sections below we report on international best practice as an evidential source for these deliberations.

Relevant Section of the Act describing Category of Membership	Category Description	Provision	Current Practice
2(b)	Chancellor	1	1
3 (a)	Nominees of Organisations	≥1 ≤4	3
3 (c)	Nominees of the Minister	Must be the same as 3 (a)	3
4 (a)	Artistic & Cultural Nominees	≤4	2
4 (b)	Graduates of the University	≤4	2
5 (g) i	Administrative County Representative	1	1
5 (g) ii	Mayor of Limerick	1	1
5 (g) iii	Nominees of UL Foundation	≥1 ≤3	3
6	Representative of MIC	1	1
Total			**17**

Table 2.2b: Universities Act Provisions for External Membership of the UL Governing Authority

Key Issue: Purpose of the Governing Authority. A fundamental consideration of the findings arising from this research poses the question: what purpose is the Governing Authority of UL designed to serve?

Section 12 of the Universities Act describes the objectives of the university in a very eloquent manner and Section 18 describes the functions of the Governing Authority – the latter essentially indicates the actions that can be taken to deliver objectives described in the former within budgetary constraints. A description of purpose for a governing body needs to be pitched somewhere between the eloquence of Section 12 and the functional authorities of Section 18. Clarification of purpose enables a shared understanding of where on the spectrum from decision making body, bearing and cascading accountability, to a parliament of stakeholders the Governing Authority ought to focus its activities.

The Code of Practice contained in the joint HEA/IUA publication "*Governance of Irish Universities*" (2012) might have been expected to outline a model purpose but it fails to do so. In contrast the Higher Education Code of Governance published by the UK Committee of University Chairs (2014) – see   www.universitychairs.ac.uk – provides a very useful basis for considering purpose in its "*Seven Primary Elements of Higher Education Governance*":

1. The governing body is unambiguously and collectively accountable for institutional activities, taking all final decisions on matters of fundamental concern within its remit.
2. The governing body protects institutional reputation by being assured that clear regulations, policies and procedures that adhere to legislative and regulatory requirements are in place, ethical in nature, and followed.
3. The governing body ensures institutional sustainability by working with the Executive to set the institutional mission and strategy. In addition, it needs to be assured that appropriate steps are being taken to deliver them and that there are effective systems of control and risk management.
4. The governing body receives assurance that academic governance is effective by working with the Senate/Academic Board or equivalent as specified in its governing instruments.
5. The governing body works with the Executive to be assured that effective control and due diligence take place in relation to institutionally significant external activities.
6. The governing body must promote equality and diversity throughout the institution, including in relation to its own operation.
7. The governing body must ensure that governance structures and processes are fit for purpose by referencing them against recognised standards of good practice.

The "*Seven Primary Elements*" clearly place the focus at the decision-making accountability end of the spectrum. We will see later how the existence of a third statutory body facilitates this concentration by providing a consultative forum to complement the governing body and academic council.

2.3 Key Findings and Learning Messages: Size

2.3.1 *Findings – Universities and Higher Education Sector*

Irish Universities

The size of governing authorities of Irish universities is summarised in Table 2.3.1a. In general, they are relatively large, with Galway, UCC, and UCD having the largest; DCU and Trinity over 25% smaller; and Maynooth and UL in between. It is surprising that there should be such variation for institutions operating under the same legislative structure. Some of this is due to the age of these institutions and the fact that the Universities Act transcribed inherited practice. However, the difference between DCU and UL is stark given the similarity in their path of evolution.

University	Size	Number of Meetings per Year	External Membership (%)
DCU	26	6	46
Maynooth	31	6	45
NUI Galway	40	5/6?	63
Trinity (University of Dublin)	27	12	7
UCC	39	6	54[1]
UCD	39	7	44
UL	35	10	49

Table 2.3.1a: Governing Bodies of Irish Universities: Size and Membership

UK: Russell Group

The Russell Group is a collection of UK universities established following the re-designation as universities of what used to be known as polytechnics. It was an attempt to distinguish themselves as "research universities" and it is generally regarded as containing the UK's leading universities. As with the Irish universities, it contains institutions that have been in existence for a century or more, along with others established in the latter half of the twentieth century.

In Table 2.3.1b overleaf, we see that the size of governing bodies at Russell Group universities is smaller than what is found in Ireland, save for the example of DCU. None of the UK institutions have a governance board comprising thirty or more people, with the average size being 23 in comparison to 34 for Irish universities.

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[1] This is conditional on certain external appointments being made of persons that are neither employees or students of the university

University	Size	Number of Meetings per Year	External Membership (%)
Birmingham	24	5	67
Bristol	20	6 + 1 away day	55
Cambridge	28	11	14
Cardiff	26	5	58
Durham	20	6	55
Edinburgh	22	5 + 2	59
Exeter	19-21	6	57
Glasgow	25	5	52
Imperial	19-23	5	55
Kings	19-21	3	58
Leeds	23	6	61
Liverpool	20	4 + 2 away days	55
LSE	17	3	53
Manchester	25	4	56
Newcastle	24	6	58
Nottingham	25	5	56
Oxford	25-28	7 + 1 away day + provision for 3 short meetings if VC requires	14
Queen Mary	21	6	57
Queens Belfast	24	4	63
Sheffield	20	5	60
Southampton	19	6	58
UCL	20	6 + 1 away day	55
Warwick	25-26	5	52
York	23	4	52

Table 2.3.1b: Governing Bodies of Russell Group Universities: Size and Membership

Universitas21 and Other International Institutions

The example institutions in Table 2.3.1c overleaf are drawn from the international grouping Universitas21, supplemented by other renowned universities to obtain a broad cross-section of global practice. The average size is 15, but the range in size makes the average a less useful metric in this instance. Alto, Amsterdam, and Zurich have very small boards (7, 4, and 8 respectively), while the Canadian institutions are similar to the Russell group average.

University	Size	Number of Meetings per Year	External Membership (%)
McGill, Canada	25	5 + 3 special	64
Queens, Canada	25	4 (evening + following morning)	68
Lund, Sweden	15	6	53
Copenhagen	11	8	55
Bergen	11	6	36
Alto, Finland	7	*not disclosed*	100
Melbourne	20	8	65
UNSW	15	6	53
Queensland	22	5	68
Harvard	13	*not disclosed*	92
Zurich	8	*not disclosed*	100
Amsterdam	4	*not disclosed*	100

Table 2.3.1c: Governing Bodies of Selected Global Universities: Size and Membership

Findings

In seeking best practice for university governance, UL should look to international rather than Irish examples in determining the appropriate size of its governing body. Irish universities, in general, have governing boards that are significantly larger than practice observed internationally. This is not due to the strictures of the Irish legislative framework, as evidenced by the example of DCU.

The contrast between Irish and international practice is stark. The average size of an Irish university governing body is 50% larger than the average for the Russell Group. This begs the question as to what factors may be influencing this practice. In seeking to answer this, it is worthwhile to consider the purpose which governing bodies are designed to serve. The matter of mission and operating principles will be addressed in detail in the second phase of our work. At this juncture, we concentrate on high level purpose.

The Irish Universities Act provides for two statutory bodies: a Governing Authority and an Academic Council, the former with responsibility with overall strategy, fiduciary and HR matters, while the latter oversees academic matters. In UK universities, the practice is to have three statutory bodies, with the third being a consultative forum established as representative of stakeholders. There is considerable variation in the composition of such fora but all are similar in purpose. This third forum enables universities to give voice and representation to internal and external stakeholders while preserving the focus of the other statutory bodies on their specific purpose. These consultative fora tend to be very large.

It could be argued that governing authorities at Irish universities, in their construction, are attempting to accommodate, alongside their own specific purpose, the role performed by the third forum at UK institutions. By this logic, the larger size of governing authorities at Irish universities may be related to the absence of a formal consultative forum.

A recent report for McGill University[2] noted a legacy of attention to evolution of governance at McGill since the late 1960s. Nonetheless a report in 2003 found that there had been little evolution in a quarter of a century resulting in *"…concerns about the Board's procedures and practices, its capacity to engage its members effectively, and its ability to attract and retain the highest calibre individuals to serve as members"*. At that time "… *differences were expressed regarding the optimal size of the Board, ranging from 10 to 30 members"*, but "*general agreement emerged on the desirability of reducing the number of members while simultaneously introducing other mechanisms to improve Board effectiveness"*. The most significant outcome of the 2003 review was to reduce board size.

> *"… from 74 members (45 voting, 22 Emeriti, 1 SSMU President and Resource Persons) to 27 (25 voting members and 2 Observers; see below), with term appointments for 27 Emeriti ending December 31 2009; since 2009, the Board eliminated term appointments for Governors Emeriti. Governors Emeriti currently serve indefinite terms."*

Many of the issues addressed in the McGill review relate to the operation of committees and the workings and relationships with the university Senate (Academic Council) and will be the subject of our Stage 2 work. In the context of our discussion of the role of the third forum at UK universities it is interesting to note the emergence of broader consultation led by the board at McGill.

> *"In an effort to provide for more opportunity for members of the McGill community to engage with the Board of Governors, the Board has established the practice of holding biannual Community Sessions, which allow members of the community to submit questions to the Board of Governors. … The Board of Governors has also established the practice of consulting student associations with respect to Board Committee assignments and established the practice of holding annual Board student forums. In addition, in the recent past, the Chair of the Board began meeting with community groups such as the McGill Communities Council."*

2.3.2 Findings – Other Sectors

From our wide experience in the field of corporate governance within the public, private, and not-for-profit sectors, we take the view that whilst the size of a governing authority or body (or board of directors, or council – the terminology differs between organisations and sectors) can be a determinant in relation to effectiveness, it is not the only factor at play.

Generally, the accepted wisdom is that smaller, more agile governing bodies tend to be more effective – it is easier to plan and convene meetings (especially at short notice, if urgent issues arise), more people get an opportunity to contribute within the time available, and discussions often have a richness of thinking than might be possible if a larger number of people are competing for precious speaking time. In addition, our own observation over many years is that when governing bodies are larger – typically, 20+ members – there may be a tendency for some members to attend less regularly, or to attend for part of the meeting, or to attend but not contribute to the discussion.

This is borne out by the academic and business literature – for example, Jeffrey A. Sonnenfeld, writing in the Harvard Business Review in 2002, commented that:

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[2] Report on Evolution of Governance Practices at McGill University (May 2017) by the Nominating, Governance and Ethics (NGE) Committee of the Board of Governors

"Small's considered good, big's considered bad. But big boards exist at some great and admired companies—GE, Wal-Mart, and Schwab—along with some poorly performing companies like US Airways and AT&T. At the same time, small boards are part of the landscape at good companies like Berkshire Hathaway and Microsoft and some not-so-good companies like Trump." [3]

Whilst some of the companies quoted above have changed somewhat since 2002 (GE's current Board has 17 members, Walmart now has 11, and Charles Schwab 17), the fundamental point remains true: there is no *direct* correlation between the size of a governing authority or board, and its effectiveness.

Elsewhere in the academic / business literature, Lipton and Lorsch (1992)[4] and Jensen (1993)[5] were the first to hypothesise that board size affects governance in a way that is independent of other board attribute issues. Following extensive research, they stated that large boards can be less effective than small boards. They explained that with larger boards, the board often becomes titular and symbolic and does not properly fulfil its monitoring, control, and decision-making duties. Problems associated with larger boards and governing bodies include:

- **Coordination and communication:** problems arise because it is more difficult to arrange board meetings and reach consensus, leading to slower and less-efficient decision-making;

- **Board cohesiveness** may be undermined because board members will be less likely to share a common purpose, communicate with each other clearly, and reach a consensus that builds on the directors' different points of view;

- **Director "free-riding"** (i.e. not attending or not contributing) may increase because the cost to any individual director of not exercising diligence falls in proportion to board size.

By contrast, some of the advantages of having larger governing bodies include:

- **Greater collective information** from larger boards may lead to higher performance; [6]

- **Monitoring role:** larger boards with greater numbers of outside non-executives will typically provide a greater collective body of information and experience to help monitor, discipline, and remove ineffective management teams, and to ensure that managers pursue the interests of shareholders. [7]

Although there is no absolute consensus, the general understanding from much of the literature is that the problems outweigh the advantages from having more people to draw on. Jensen (1993) notes that "*when boards get beyond seven or eight people they are less likely to function effectively and are easier for the CEO to control*". Lipton and Lorsch argue that a board size of eight or nine directors is optimal.

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[3]   Jeffrey A. Sonnenfeld, *What Makes Great Boards Great*: Harvard Business Review, Sept 2002
[4]   Lipton, M. and Lorsch, J. W. (1992) *A modest proposal for improved corporate governance*, Business Lawyer, 48, 59-77
[5]   Michael. C. Jensen, The Modern Industrial Revolution, Exit, and the Failure of Internal Control Systems, The Journal of Finance, Vol. 48, 1993
[6]   Dalton, D., Daily, C., Johnson, J. and Ellstrand, A. (1999) *Number of directors and financial performance: A meta-analysis,* Academy of Management Journal, 42, 674-686
[7]   Raheja, C. G. (2005) *Determinants of board size and composition: A theory of corporate boards,* Journal of Financial and Quantitative Analysis, 40, 283-306

Whilst there is no direct correlation between the size of the board or governing authority and its effectiveness, it can, however, be a contributory factor: in our review of the governance of the Nursing and Midwifery Board of Ireland (NMBI), for instance[8], we reported that *"At 23 members, the Board of NMBI is unwieldy"* – but this was only one of a number of complex factors impacting upon the effectiveness of that organisation's governance processes. By contrast, another statutory healthcare regulator with which we have worked over many years, the Pharmacy Regulator (PSI), has a Council of 21 members[9], yet in our experience their governance processes are highly effective and are not compromised by the relatively large size of the governing authority.

From the literature and from our own experience in corporate governance, we would suggest that other factors, aside from the size of the governing body, which can impact on the effectiveness of governance processes include (but may not be confined to) the following:

◼ The channelling of business through sub-committees, which may include both members of the Board and co-opted external members with specific expertise, to ensure that matters of detail get considered and discussed in depth and that an informed view can be presented to the board for final decision;

◼ Effective and professional servicing of the governing body and its sub-committees, to ensure that information is presented clearly and in a timely manner to permit adequate consideration and discussion;

◼ Effective chairing of meetings, adhering to the agenda, facilitating an active discussion which permits various (likely competing) arguments to be made, with a view to reaching informed decisions and identifying forward actions arising;

◼ Board dynamics – having a cohesive approach to governance, including the avoidance of factions / interest groups on the board, and the adoption of team-working approaches (i.e. working towards the common good of the organisation, rather than representing factional interests). Sonnenfeld[10] comments that "*What distinguishes exemplary boards is that they are robust, effective social systems*" – involving respect, trust, candour and a good chemistry between members;

◼ Transparency and openness in the way governance works, leading to greater accountability;

◼ Balanced, diverse and inclusive membership – ensuring that a broad range of perspectives and backgrounds is represented on the governing body, combining both internal and external members.

2.3.3 Learning Messages for UL

We believe that the key learning messages and issues for consideration by UL arising from the above research include the following:

◼ The general literature on governance finds that the problems associated with larger boards outweigh their advantages;

◼ The size of governing bodies at Irish universities, in general, is considerably larger than the practice followed at the world's leading universities;

◼ The size of the current UL Governing Authority is at least 50% larger than the international norm;

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8   Crowe Horwath, *Final Report to the Nursing and Midwifery Board of Ireland: Organisation Review*, 17 November 2015 (https://www.nmbi.ie/NMBI/media/NMBI/Crowe-Horwath-Final-Report-as-issued-to-NMBI-2015_1.pdf)
9   As stipulated in the Pharmacy Act, 2007, Part 3, Section 10 (2)
10   Jeffrey A Sonnenfeld, op. cit.

- The provisions of the Universities Act, 1997 would facilitate UL in achieving an outcome in accordance with international best practice;

- Stakeholder involvement in university affairs could be preserved and extended while reducing the size of the Governing Authority by following the example common in Russell Group universities to have a third forum (potentially established by statute) functioning as a consultative and advisory body;

- Size is not the only determinant of success or effectiveness within governing bodies generally across all sectors – but there are few governing bodies within the private, public or not-for-profit sectors which have more than twenty members, and the international evidence tends to suggest that boards or governing bodies consisting of between seven and nine members is considered to be best practice;

- Many other factors contribute to the effectiveness of a governing body, and these need very careful consideration and preparation in a cohesive manner.

2.4 Key Findings and Learning Messages: Membership

2.4.1 Findings – Universities and Higher Education Sector

The specification in the Universities Act 1997 in respect of the composition of governing authorities is broadly consistent with practice internationally. Globally, governing boards make provision for membership internal to the university – to include university leadership, the academic community of the university, the student body, and employees of the university – and membership external to the university. Some continental European and Nordic universities differ in having very small focused boards that do not seek to be representative of broad groups, instead focusing on external supervision.

In Tables 2.3.1a, 2.3.1b and 2.3.1c above, we report data on the proportion of external membership of university governing authorities. This data reveals a general difference between practice at Irish and international universities. The norm in Ireland is for a majority of membership to be internal, while the opposite is the case internationally. In some of the international examples the membership is drawn entirely from outside, but this is the exception.

Cambridge and Oxford are outliers among the Russell group. However, it must be recognised that these universities are themselves composed of largely independent colleges with representation on the university board. There is a case for viewing these representatives as playing an independent role in university affairs so that the "external" representation at university level may be understated. Trinity College Dublin is an exception among exceptions in its small level of external representation. Its original model mimics Cambridge and Oxford but it does not have the broad set of "college" representatives on the university governing body.[11] The unique circumstances of these three universities do not offer an appropriate comparator for assessing international best practice on the composition of university governing boards.

The question of external to internal majority should be viewed in the context of being seen to have practices in place that *give assurance* that oversight is performed at arm's length from

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[11]	Trinity College is the single college of the University of Dublin whereas the Universities of Cambridge and Oxford are each comprised of a large number of colleges.

the operations of the institution and the interests of members of the university. The UK Higher Education Code of Governance[12] notes the importance of giving assurance.

> *"By visibly adopting the Code, governing bodies demonstrate leadership and stewardship in relation to the governance of their own institutions, and in doing so help to protect institutional reputation and provide a level of assurance to key stakeholders, partners including the student community, and society more widely."*

While a balance in favour of external membership will not guarantee appropriate governance outcomes, it can go a long way to giving assurance. It is difficult to back up the case for an external majority with evidence of variation in the relative performance of the institutions governed by bodies with an external as opposed to an internal majority. However, given that an external majority is the norm internationally, operating an internal majority is not conducive to protecting institutional reputation if negative events related to governance oversight occur.

In analysing the processes involved in populating the membership of governing bodies, we note that many institutions experience challenges in recruiting external membership with the breadth and depth of skills appropriate to oversee the governance of a complex institutions like a university. A small number of prestigious universities appear to have less difficulty, as people wish to be associated with renowned institutions. However, there is evidence that the majority need to engage in active recruitment campaigns. In this context, the external to internal balance might be seen as a factor influencing the decision of a potential external governor in deciding whether to accept an appointment.

We found no evidence of payments being made for serving on a governing body of a university. This is a matter that we will pursue further in Stage 2. However, it is unlikely to be a factor of any significance in attracting members.

The scale of commitment may have a bearing on the willingness of external person to accept appointment to a governing body. We use the number of plenary meetings as a preliminary indicator of the extent of commitment[13] and this is reported, where data is available, for Irish and international universities in Tables 2.3.1a, 2.3.1b and 2.3.1c. The norm is approximately six meetings per year; Cambridge, Oxford, and Trinity are again exceptions. Settings these aside, UL at ten meetings per year is unusual even among the Irish universities.

The issue of appointment of external members in Irish institutions would appear to call for an active involvement by the chief officer (President). This is formally noted in the Act in the case of ministerial appointees. In practice, the involvement can be broader. In the case of NUI universities, the appointments from the NUI senate are generally made on the nomination of the chief officer of the constituent university. There is also some anecdotal evidence of presidents taking a lead role in influencing the nature of appointments from external bodies. While it is appropriate for the university to communicate the desired skill set of potential governors, it would be more appropriate to do so in a formal document.

External governors in UK and US universities appear to play an active part in recruiting new external governors. This is facilitated by the practice of having staggered terms of appointment so that the group of external members at any time can have responsibility for supporting recruitment and orderly transition.

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[12] Committee of University Chairs (UK), The Higher Education Code of Governance. 2014
[13] In Stage 2 we will also examine the extent of commitment work in forming a more complete measure of the extent of commitment.

In terms of skillset, the overwhelming practice internationally is for external governors to have commercial backgrounds. It is surprising that external expertise from academia is much less well represented on governing authorities. The exceptions are the continental European and Nordic institutions. Alto University in particular has attracted international academic members of a very high calibre to serve on its board.

The Governance Boards of Science Foundation Ireland research centres are at an evolving stage and their future role is under review. It is noteworthy, however, that some of these boards have managed to attract leading international scientists to serve on their boards. In one example, with which we have direct involvement, the scientist travels from the US and is one of the more active members of the board.

2.4.2 Findings – Other Sectors

For the vast majority of organisations, significant work goes in to ensuring that their boards are equipped with the skills, experience, and personal qualities required to discharge their duties competently and effectively. Within the private sector, our experience is that this is generally done on an informal basis – existing boards and their Chairs will typically seek to ensure that the qualities of departing board members are at least matched by those of new recruits to the board.

The Code of Practice for the Governance of State Bodies (2016)[14] presents quite detailed guidance in respect of the makeup of the membership of Irish state bodies, including the following provisions:

> "**Skills and Knowledge:** *Board members should have the appropriate skills and knowledge, updated as required, appropriate to the activities of the State body, to enable them to discharge their respective duties and responsibilities effectively. This should include the identification by the Board of any gaps in competencies and ways these gaps could be addressed through future appointments.*
>
> *Skill gaps present on the Board should be brought to the attention of the relevant Minister by the Chairperson of the Board sufficiently in advance of a time when Board vacancies are due to arise*
>
> **Specific Skills:** *In compliance with the Guidelines on Appointments to State Boards, in preparing a specification for a role on a State Board the relevant Minister will consult with the Chairperson of the Board to seek his or her view on the specific skills that are required on the Board.*
>
> **Diversity:** *Appointments to State Boards should be made against objective criteria with due regard for the benefits of diversity on the Board. The Chairperson of the Board, in assisting the Department in drawing up the specification for the Board appointment should have due regard for the benefits of diversity on the Board including gender.*
>
> *Chairpersons should maintain a focus on those Boards on which either women or men are significantly under-represented and should actively seek to appoint*

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14   Code of Practice for the Governance of State Bodies, Department of Public Expenditure and Reform, Dublin, August 2016, Sections 4.2 to 4.4

candidates of the under-represented gender from the Public Appointments Service short list where possible."

There is no specific guidance in respect of the proportion of executive to non-executive board members within the Irish public sector, and the composition of boards or other governing bodies tends to vary between organisations, depending on their nature, role, and statutory basis.

Within the not-for-profit sector, there is little formal guidance on the composition of boards, but there is a general tendency to aim for diverse boards which include a range of skills and backgrounds. However, many charities – which depend upon pro bono time commitment of their board members – struggle to achieve this in practice, particularly in terms of securing the involvement of board members from financial, legal, marketing, and general management backgrounds.

2.4.3   Learning Messages for UL

We believe that the key learning messages and issues for consideration by UL arising from the above research include the following:

■ It is generally acknowledged that an effective board includes members with a range of skill sets. However, the not-for-profit sector and universities, in general, often experience difficulty in attracting external members with the requisite skills;

■ A balance of membership that involves a majority of external members is common practice among universities internationally but not in Ireland;

■ The provisions of the Universities Act would enable an Irish university to achieve an external majority in membership;

■ Maintaining an external majority on the governing body could act as a component in providing assurance of good governance to key stakeholders and society at large;

■ It would be expected that experience in academia would be identified as a desirable attribute for some of the external members. However, we did not observe this as being the norm in practice. Exceptions are continental European and Nordic institutions. It is also a feature of the Governance Boards of SFI research centres. It would be an innovative aspect of membership worth exploring for UL;

■ The level of commitment required of members, as measured by the number of plenary meetings, is excessive for the UL Governing Authority when judged against national and international best practice.

2.5   Key Findings and Learning Messages: Term of Office

2.5.1   Findings – Universities and Higher Education Sector

The terms of office for members of governing bodies are provided for in the Third Schedule of the Universities Act 1997, with the relevant sections stating:

"4. A member of a governing authority (including a chairperson appointed under section 17 (3)) whose term of office expires by effluxion of time shall be eligible for re-appointment.

> *4. (1) Subject to this Schedule and to section 21, the term of office of a member of each succeeding governing authority, other than an ex officio member, shall be not less than three years and not more than five years as determined by the governing authority holding office immediately before the appointment of that member.*
>
> *(2) A member of a governing authority who is a student of the university shall hold office for such period, not exceeding one year, as the governing authority may determine but may be re-appointed for a further period or further periods, on each occasion not exceeding one year."*

The length of term at 3 to 5 years accords with international practice, as does the capacity for re-appointment. Many institutions are silent on the capacity for extended membership of the governing authority. Given the challenge often encountered in sourcing external members, it is likely that institutions will not want to be constrained by regulation in retaining the skills of external persons who demonstrate a capacity for active involvement.

Section 16.11 of the Universities Act allows for regulations pertaining to membership to be established. While Section 4 of the Third Schedule *allows* for re-appointment, it would be hard to argue that it represents a *right* of re-appointment. Emerging practice in the not-for-profit sector, as we note in the next section, favours rotation. However, establishing additional restrictions on membership, in the context of a very prescriptive legislative framework, could result in unintended consequences such as difficulties in making an appointment.

It might be useful to consider rotation and an external majority on the governing board as each contributing to providing assurance of independent oversight. There is a case for moving to an external majority as a more certain first step in enhancing assurance.

While sub-section 4.1 would allow for staggered terms of office, this is not the status quo for Irish universities. In contrast, the practice of staggered appointments is widespread internationally. As noted in the previous section this tends to be employed in relation to recruitment of external members so that "institutional memory" is preserved among the group of external members.

The sub classification of external membership of governing bodies of Irish universities is far more prescribed that practice found elsewhere. The norm is for external membership to be a single group of eight to eleven members. This facilitates staggering the terms of office of those appointed while maintaining continuity.

Staggered external membership of the governing authority would be more difficult to achieve at UL. The eleven positions for external membership that occur as a result of nomination as opposed to being ex officio or elected come from four different categories of membership.

2.5.2 Findings – Other Sectors

Our experience in the private sector is that many organisations have no formal policies with regard to how long a director should serve on the board. The Companies Act 2014 does not include any statutory rules for how long directors can serve on the board of a company. Our observation is that in some organisations which are performing well commercially, directors may serve for many years (10, 20, or more years) without coming under pressure to step down, or any sense that this might be helpful in the interests of the company. Stability is seen to be a positive aspect.

In other instances, for example where performance deteriorates or where the business becomes subject to a possible merger or takeover, more frequent rotation of board members is commonplace.

In certain sectors which were at the centre of the global financial crisis in 2007-08, notably banks and other financial institutions, greater scrutiny and intensified regulation has led to more defined expectations and rules in respect of governance, including the term of office.

For instance, the Central Bank of Ireland is overseen by a Commission, established under the Central Bank Reform Act 2010, responsible for ensuring that the statutory functions of the Central Bank are properly discharged. The Commission's external members are appointed for a maximum of five years, which may be extended for a further term of five years.

Similarly, the Bank of England has a Court of Directors which acts as a unitary board, setting the organisation's strategy and budget and taking key decisions on resourcing and appointments. Required to meet a minimum seven times per year, it has five executive members from the Bank and up to nine non-executive members. The Governor serves on Court for a period of eight years, the Deputy Governors for five years, and the non-executive members for up to four years.

A high-level review of a selection of banks and financial institutions in Ireland, Europe and North America suggests that a 5- to 10-year term of office for directors is normal, although some outliers (e.g. 12 to 15 years) may be observed.

For State bodies in Ireland, the guidance is much more definitive. The Code of Practice for the Governance of State Bodies (2016)[15] states:

> *"Consistent with best corporate governance practice it is recommended that no member of a State Board should serve more than two full terms of appointment on that Board, or should hold appointments to more than two State Boards, at the same time, unless the specific statutory provisions relating to the particular State body enable such service. In this context, a full term is regarded as five years. It is recommended that the first appointment be for a period of five years, which can be renewed for up to five years, to a maximum of ten years in total. If exceptionally it is decided that a Board member should serve a further additional Board term, this requires Ministerial approval.*
>
> *State bodies should vary the length of terms of appointment to ensure that the Board does not have to be replaced en masse and to ensure that the Board has the necessary experience to discharge their responsibilities effectively."*

Within the not-for-profit sector, a significant body of guidance on corporate governance either has recently been created or is in the process of being developed– much of this happening in the wake of major charity scandals over the last five years. Although there are no hard-and-fast rules regarding length of service of board members, the general tendency for many larger charities is to move towards a model whereby members serve a term of three or four years, and may be reappointed for a term of similar duration. Some charities – including some advised by Crowe Horwath – have chosen a governance model whereby no board member may serve for more than two consecutive terms, with their constitutions rewritten to stipulate

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15   Code of Practice for the Governance of State Bodies, Department of Public Expenditure and Reform, Dublin, August 2016, Section 4.5

that a period of 12-24 months must pass following the second term before they can be reconsidered for appointment. All of these provisions are designed to ensure that boards can stay fresh, can replenish their skills, and can avoid their thinking becoming stale and their scrutiny of the work of the executive losing its sharpness.

For most sectors, rotation of board members is a significant issue, and the Code of Practice for the Governance of State Bodies as quoted above makes a clear point regarding the need to ensure that the board does not depart en masse.

Our own experience includes working with several major public bodies in Ireland whose governing bodies did experience this very scenario, with all members coming to the end of their term on the same day, leaving the executive in a position of being unable to transact business or reach any decisions until the relevant Minister had appointed a new board. Whilst this process is generally quite swift, problems can arise – for example, in 2014 the Broadcasting Authority of Ireland was unable to meet or do business for several months because the Government had failed to appoint sufficient new members to permit a quorum following the expiry of the term of office of the majority of the nine BAI members that September (the quorum was five, and only four members remained).[16]

As a consequence, many organisations in the public, private and not-for-profit sectors have adopted formal or informal policies to ensure that suitable rotation takes place on boards. For many organisations, a well-managed governance process and watchful Chairs can help to ensure that this is organised well and in a timely fashion.

2.5.3   Learning Messages for UL

We believe that the key learning messages and issues for consideration by UL arising from the above research include the following:

- Term of office limits of board membership is strictly defined as a requirement for public bodies. In contrast, private sector boards tend towards long tenure when things are going well with significant turnover more likely to be triggered by weakness associated with commercial performance or regulatory failure;

- Globally, universities tend to be silent on the imposition of term limits and this is likely associated with the challenges often encountered in attracting external members with the requisite skills;

- The terms of office, as provided for by the Universities Act, 1997 is in line with international practice;

- Staggered rotation of governing body membership is a feature at universities internationally but not in Ireland. Our direct experience with boards of public bodies in Ireland speaks to the value of such rotation. While an en masse exit at the end of a term would be unlikely at an Irish university, there could be a significant loss of "institutional memory" if key external members of the governing body were to leave at the same time. Internal members will be well versed in the ways of the institution and will be engaged in many for a with their colleagues so that institutional memory banks are likely to be shared;

- The subdivision of categories of governing body membership, as prescribed in legislation, makes the task of rotation among external members difficult.

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16   Prof Colum Kenny, Broadcasting Authority of Ireland unable to do business because of delay in new appointments, Irish Times, Nov 20, 2014

3 Key Issues and Recommendations for Consideration by UL

3.1 Overview

On the basis of the findings set out in the preceding sections of this report, the following key issues are worthy of further, detailed consideration by UL:

- Issue 1 – The Size of the Governing Authority;
- Issue 2 – Whether to mandate for a majority of External Members on the Governing Authority;
- Issue 3 – Governing Authority Membership Composition
- Issue 4 – A Statement of Desirable Skills and attributes for members of the Governing Authority;
- Issue 5 – The number of meetings of the Governing Authority;
- Issue 6 – Term Limits and Staggered Terms of membership.

These issues are discussed in the following paragraphs, and our recommendations are presented for consideration by UL.

3.2 Issue 1: The Size of the Governing Authority

If we consider the evidence emerging from international best practice, the clear suggestion is that most universities within the Russell group have membership of their governing bodies within the low to mid 20s, with a few outliers slightly under or over that range. Within the private sector, public sector and not-for-profit sector, the number of members represented on boards or other governing bodies tends to be much less, generally in the range of 7 to 9 members.

There is, of course, no "magic number" within the evidence, and as we have argued, not only is every organisation different but the governance structure which suits one organisation may prove to be wholly unsuited to the nature or culture of another.

> **Crowe Horwath recommendation to UL:** taking into account the fact that UL currently has 35 positions on its Governing Authority (18 internal and 17 external), we recommend that a reduction by around 25% would bring UL into line with the majority of international comparators. This would entail the Governing Authority reducing from 35 to 26 members.

Of course, it must be recognised that simply reducing the size of the Governing Authority would not on its own automatically deliver improvement in operation. Such a change would need to be tempered with a clear articulation of the purpose of the Governing Authority, so that the size could be aligned with purpose. A reduction in size, along with a decision that the Governing Authority should focus predominantly on being a decision-making body, could be accompanied by the creation of a consultative forum enshrined in statute – like the fora in place in most Russell group universities – to enable an appropriate set of stakeholders play a part in the overall delivery of the university's mission.

3.3 Issue 2: Whether to Mandate for a Majority of External Members on the Governing Authority

It is desirable – as a matter of assurance of oversight designed to enhance the reputation of the University – to formally mandate for a majority of the membership of the Governing Authority to be comprised of persons that are neither employees nor students of the university.

> **Crowe Horwath recommendation to UL:** we recommend that a majority of members of the Governing Authority at UL should be external appointees.

3.4 Issue 3: Governing Authority Membership Composition

If UL accepts the recommendation above that its Governing Authority should consist of 26 members, the question arises as to what the composition of that membership should be, taking into account the categories set out under Section 16 of the Universities Act 1997.

Of these categories, six must stay at the present level of membership representation (1) as they are specifically mandated within the legislation, or they are ex officio. The other categories are all stipulated as being within a range, with one category (undergraduates) being at the lowest point in that range and thus unable to be reduced. These seven categories which must remain at the present level of membership representation and cannot be reduced are presented in yellow highlight within the tables shown below.

This leaves nine categories (four internal and five external) which we believe should be considered for a reduction in their membership numbers. On that basis, if UL accepts the above recommendation that the majority of members on the Governing Authority should be external, an appropriate composition of the membership would be 12 internal and 14 external members.

A suggested model is depicted in Table 3.4a below, which would involve three categories (professorial staff, other academic and research staff, and non-academic staff) reducing to the lowest value in the range set down in the Act, and the other category (senior officers) remaining at the present level, which we believe is justifiable given the strategic remit of the Governing Authority and the contribution which these officers will be expected to make.

Relevant Section of the Act describing Category of Membership	Category Description	Provision	Current Practice	Proposed Number
2(a)	President	1	1	1
2 (c)	Senior Officers	≥1 ≤2	2	2
2 (d) i	Professorial Staff	≥2 ≤6	4	2
2 (d) ii	Other Academic & Research Staff	≥3 ≤5	5	3
2 (d) iii	Non-Academic Staff	≥1 ≤3	3	1
2 (d) iv	Undergraduates	≥2 ≤3	2	2
2 (d) iv	Postgraduates	1	1	1
Total			18	12

Table 3.4a: Proposed Internal Membership of the UL Governing Authority

For the proposed 14 external members of the Governing Authority, a suggested model is depicted in Table 3.4b below, which would involve two categories (artistic and cultural nominees, and graduates of the University) remaining at their present level, and the other three categories (nominees of organisations, nominees of the Minister, and nominees of the UL Foundation) each reducing from 3 to 2 members.

Relevant Section of the Act describing Category of Membership	Category Description	Provision	Current Practice	Proposed Number
2(b)	Chancellor	1	1	1
3 (a)	Nominees of Organisations	≥1 ≤4	3	2
3 (c)	Nominees of the Minister	Must be the same as 3 (a)	3	2
4 (a)	Artistic & Cultural Nominees	≤4	2	2
4 (b)	Graduates of the University	≤4	2	2
5 (g) i	Administrative County Representative	1	1	1
5 (g) ii	Mayor of Limerick	1	1	1
5 (g) iii	Nominees of UL Foundation	≥1 ≤3	3	2
6	Representative of MIC	1	1	1
Total			17	14

Table 3.4b: Proposed External Membership of the UL Governing Authority

Crowe Horwath recommendation to UL: we recommend the Governing Authority membership model presented above should be considered and adopted by UL.

3.5 Issue 4: A Statement of Desirable Skills and Attributes for Members of the Governing Authority

International best practice suggests that governing bodies which include a broad diversity of skills, experience and background within their membership perform best and allow for informed discussion and decision-making reflecting a variety of perspectives.

Crowe Horwath recommendation to UL: The university should compile a list of desirable skills and attributes that should be reflected in the membership of the Governing authority. This list should be made available as official guidance to nominating bodies. It would be desirable to mandate that "accomplishment in leadership and scholarship in academia" be displayed by at least one of the external members of the Governing Authority.

3.6 Issue 5: The Number of Meetings of the Governing Authority

We believe that the level of commitment required of members, as measured by the number of plenary meetings, is excessive for the UL Governing Authority when judged against national and international best practice.

Crowe Horwath recommendation to UL: The number of meetings of the Governing Authority should be reduced to six. One of these should ideally be a full day meeting and consideration should be given to having a joint meeting with the Academic council – and consultative forum, if established – during that day.

3.7 Issue 6: Term Limits and Staggered Terms of Membership

The international evidence strongly suggests that the term of office for members of governing bodies within the wider public sector should not be of indefinite duration, and that it is important to refresh the skills, perspectives and experience of members through a process of rotation. Avoiding staleness or "groupthink", and providing a healthy balance between the executive and the governing body, are paramount considerations.

Notwithstanding this issue, it would be desirable for UL to avoid the en masse departure of the members of its Governing Authority, or even the departure of key members at the same time, and this would reflect international best practice across many sectors, which tends toward the staggered rotation of board or governing body members. However, we recognise that there are particular challenges for UL (and indeed for other Irish universities) due to the specific provisions of the legislation, which sets out the number of members who can be appointed by various categories (internal and external members).

Crowe Horwath recommendation to UL: we recommend that UL should adopt a policy that, while members of the Governing Authority are eligible for re-appointment, no person can serve continuously for more than 10 years.

With regard to staggered rotation, it is important that an appropriate policy or mechanism be developed which enables UL to preserve its institutional memory and to facilitate continuity on its Governing Authority.

If UL agrees to the recommendation of a 26 person Governing Authority, eight appointments will be ex officio and related to a specific duration of tenure (some for only one year):

- The Chancellor
- Administrative County Representative
- Mayor of Limerick
- Postgraduates

- The President
- MIC Representative
- Undergraduates (2)

For the other 18 members, we would suggest that the fairest way of establishing staggered rotation is to draw lots immediately upon their initial appointment. This would involve the following:

- All members of the new Governing Authority would serve for at least three years, in order to give the new body an opportunity to bed in and to see through the important work which lies ahead of it;

- At the end of Year 3, one third of these 18 members (i.e. 6 individuals chosen by lot) would step down from the Governing Authority and, if eligible (i.e. not having served, or not being likely to exceed, a total of 10 consecutive years) could then present their candidacy for reappointment;

- At the end of Year 4, a further one-third of these 18 members (i.e. the next 6 individuals chosen by lot) would step down from the Governing Authority and, if eligible (i.e. not having served, or not being likely to exceed, a total of 10 consecutive years) could then present their candidacy for reappointment;

- At the end of Year 5, the final one-third of these 18 members (i.e. the final 6 individuals chosen by lot) would step down from the Governing Authority and, if eligible (i.e. not having served, or not being likely to exceed, a total of 10 consecutive years) could then present their candidacy for reappointment;

- Any member stepping down who is not eligible (in terms of the 10-year criterion set out above), or who did not wish to be considered for reappointment, would then leave the Governing Authority entirely.

This arrangement would see changes to the membership of the Governing Authority at the end of Years 3, 4 and 5; the process would then repeat itself and further change would occur at the end of Years 8, 9 and 10. (Other natural changes within the Governing Authority – such as members resigning, the death of a member, etc. – could be accommodated within the process and provisions made for one-off new appointments in line with the above model.)

These arrangements are commonplace within the private and not-for-profit sectors, and it is generally seen that the selection of directors by lot is the fairest way of ensuring smooth and effective rotation. This is also provided for within the Companies Act 2014, which states (albeit in a slightly more general sense than the specific circumstances at UL):

> *The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.* [17]

Crowe Horwath recommendation to UL: we recommend that UL should adopt the staggered rotation model for its Governing Authority as set out above.

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[17] Companies Act 2014, Section 1196 (4).

Appendix 1

Universities Act 1997 – Section 16: Composition of Governing Authority

(1) Subject to this Part, a governing authority shall consist of such members, being not less than 20 or more than 40, as determined in accordance with this Chapter.

(2) The members of the governing authority shall include—

(*a*) the chief officer,

(*b*) a person appointed under *section 17* *(3)* as the chairperson (if so appointed),

(*c*) at least one but not more than two senior officers of the university having responsibility to the chief officer for academic, financial or administrative affairs, appointed by the governing authority, one of whom shall be the senior officer having responsibility for academic affairs, and

(*d*) the following members elected in accordance with regulations made under *subsection (11)*:

(i) not less than two or more than six members of the academic staff of the university who are Professors or Associate Professors, elected by such staff;

(ii) not less than three or more than five permanent or full-time members of the other academic staff of the university elected by such staff;

(iii) at least one but not more than three permanent or full-time employees who are not members of the academic staff of the university elected by the non-academic staff;

(iv) not less than two or more than three students of the university who are elected officers of the Students Union or other student representative body in the university recognised by the governing authority, and

(v) one post-graduate student elected by the post-graduate students.

(3) Subject to *subsection (7)*, in addition to the persons chosen and appointed pursuant to *subsection (2)*, but included in the maximum number of members specified in *subsection (1)*, there shall be—

(*a*) at least one but not more than four persons, chosen by a committee of the governing authority comprising the chief officer and two other members, from among nominations made by such organisations as are representative of employers, trade unions, agriculture, fisheries, community organisations, Irish language and Gaeltacht organisations, the professions, business and industry as the governing authority considers appropriate, of whom at least one shall be chosen from those nominated by organisations representative of business or industry,

(*b*) where by or under an Act there is established a body for a region in which the university is located a function of which is to advise the Minister in relation to the planning and co-ordination of education services at primary and post-primary levels, at least one but not more than two persons who are not members of the governing authority or employees of any other university, the Dublin Institute of Technology established by section 3 of the Dublin Institute of Technology Act, 1992 , or a regional technical college established by or in accordance with section 3 of the Regional Technical Colleges Act, 1992 ,

chosen by a committee of the governing authority constituted as provided in *paragraph (a)*, from among persons nominated by that regional body, and

(*c*) subject to *subsections (8)* and *(9)*, the same number of persons as chosen in accordance with *paragraph (a)*, who shall be appointed by the governing authority on the nomination of the Minister, after consultation by the Minister with the chief officer.

(4) In addition to the members chosen and appointed pursuant to *subsections (2)* and *(3)*, but included in the maximum number of members specified in *subsection (1)*, a governing authority may have as members not more than—

    (*a*) four persons appointed having particular regard to the extent to which artistic and cultural interests are represented among the members, and

    (*b*) four graduates of the university, elected by such graduates and, in the case of a constituent university, graduates for the purposes of this subsection includes persons on whom a degree of the National University of Ireland was conferred as a result of their studies at the corresponding constituent college or Recognised College,

who, subject to *subsection (7)*, shall be chosen and appointed as determined by the governing authority.

(5) In addition to the members chosen and appointed pursuant to *subsections (2), (3)* and *(4)*, but included in the maximum number of members specified in *subsection (1)*, the governing authorities shall appoint as members—

    (*a*) in the case of Dublin City University—

        (i) one person chosen by a committee of the governing authority comprising the chief officer and two other members, from among persons nominated for that purpose by the councils of the administrative counties of Fingal, South Dublin and Dún Laoghaire-Rathdown and the Corporation of Dublin county borough, and

        (ii) at least one but not more than three persons chosen by a committee of the governing authority comprising the chief officer and two other members, from among persons nominated for that purpose by the Dublin City University Educational Trust or its successor body,

    (*b*) in the case of the National University of Ireland, Cork—

        (i) the Lord Mayor of Cork,

        (ii) the Mayor of Waterford,

        (iii) two persons nominated by the National University of Ireland, and

        (iv) five persons elected by the councils of the administrative Counties of Cork, Waterford, Kerry, Limerick, Tipperary (North Riding) and Tipperary (South Riding),

    (*c*) in the case of the National University of Ireland, Dublin—

        (i) the Lord Mayor of Dublin,

        (ii) two persons nominated by the National University of Ireland, and

        (iii) eight persons elected by the members of the General Council of County Councils,

    (*d*) in the case of the National University of Ireland, Galway—

        (i) two persons nominated by the National University of Ireland, and

        (ii) seven persons elected by the members of the Corporation of the County Borough of Galway and the councils of the administrative Counties of Galway, Mayo, Sligo, Clare, Leitrim and Roscommon,

    (*e*) in the case of the National University of Ireland, Maynooth—

      (i) two persons nominated by the National University of Ireland, and

      (ii) three persons chosen by the chief officer from among persons nominated for that purpose by the Trustees for the time being of St. Patrick's College, Maynooth,

   (*f*) in the case of Trinity College, not less than three or more than six fellows of Trinity College chosen as determined by the governing authority,

   (*g*) in the case of the University of Limerick—

      (i) the chairperson of the council of the administrative county of Limerick or a person nominated by him or her,

      (ii) the Mayor of Limerick, and

      (iii) at least one but not more than three persons chosen by a committee of the governing authority comprising the chief officer and two other members, from among persons nominated for that purpose by the University of Limerick Foundation or its successor body.

(6) Where an educational institution is associated with a university in accordance with an agreement between that institution and the university and that agreement provides that the governing authority of the university shall have as members employees or students of the institution then, in addition to the members chosen and appointed pursuant to *subsections (2)* to *(5)*, but included in the maximum number of members specified in *subsection (1)*, the governing authority shall include such members as are so provided for.

(7) Except in the case of a person appointed under *subsection (4)* where the governing authority has waived the restriction otherwise imposed by this subsection, a member referred to in *subsection (3)* or *(4)* shall not be an employee or a student of the university.

(8) Where immediately before the commencement of this Part a governing body (by whatever name known) of a university or constituent college contained members appointed by the Minister or the Government, the number of members of the governing authority to be appointed on the nomination of the Minister in accordance with *subsection (3)(c)* shall be not less than the number of persons so appointed and holding office immediately before the commencement of this Part, or three persons, whichever is the lesser number.

(9) In nominating persons for the purposes of *subsection (3) (c)*, the Minister shall ensure that there are at least two members of the governing authority chosen or to be appointed under *subsection (3) (a)* or *(c)* who are nominated by organisations representative of business or industry or who, in the opinion of the Minister, are representative of business or industry.

(10) In performing its functions under this section a governing authority shall ensure that each sex is represented on the governing authority in accordance with such gender balance as may from time to time be determined or approved by the Minister.

(11) A governing authority may make such regulations relating to the selection, election, nomination or appointment of members of the governing authority as it thinks fit, and their selection, election, nomination or appointment shall be carried out in accordance with those regulations.