HESA

HIGHER EDUCATION SOUTH AFRICA

ANALYSIS OF RECENT ASSESSOR REPORTS OF UNIVERSITIES IN SA
REPORT PREPARED FOR THE HESA WORKSHOP ON 19 JULY 2012 AND ADOPTED
BY THE HESA BOARD ON 17 OCTOBER 2012

EXECUTIVE SUMMARY

In the past year or two the Minister of Higher Education and Training appointed assessors for a number of South African universities in terms of the Higher Education Act, No 101 of 1997. In this report a summary is given of the most common issues raised in the assessor reports for the following universities: Tshwane University of Technology (TUT), University of Zululand (UniZul), Walter Sisulu University (WSU), Vaal University of Technology (VUT), and Central University of Technology (CUT).

In the majority of cases the problems and difficulties experienced by the various institutions fall into four clear categories:

- Governance failings in respect of council's functioning;
- Fraught relationships between councils and the VC and other members of staff;
- Ineffective institutional structures such as senate and the institutional forum; and
- Management failures and challenges particularly in the fields of HR and finance, although in one case management failures in the registrar's office were also identified.

In this report various governance and management issues related to these four categories are analysed.

1. Governance failings in respect of council's functioning

- **Chairpersons and deputy chairpersons of councils**

Although none of the assessor reports directly attribute the perceived or real failures in council governance experienced at the above-mentioned universities to either the chairperson or deputy-chairperson of council, the failures listed in the various assessor reports clearly indicate that chairpersons of council and to a lesser extent, deputy chairpersons of council either do not have the necessary experience or competence to chair such councils or somewhere along the line, they simply lost control of council and its meetings.

Proposals are made to include some requirements relating to desired competencies and levels of experience for chairs and deputy chairs of council in institutional statutes or in council rules.

In addition, proposals are made to enhance the status and functioning of the newly established University Council Chairs Forum of South Africa and through it to enhance governance levels in higher education.

- **Capacity in which council members serve**

The assessor reports show that a significant contributory factor to breakdowns in governance consisted of members nominated by constituencies such as the SRC, senate and labour etc choosing to function (and being allowed to do so) as mandated representatives of their nominating body rather than as individual experts in the interest of the institution.

Proposals are made to include this matter in the council's code of conduct or in the institutional rules and to obtain a formal written undertaking by all members of council confirming that they commit themselves to function as individual experts on council and not in terms of any mandated position set by their nominating structures.

In the context of higher education a question is also raised on the appropriateness for unionised labour rather than all staff members (unionised or not) to be represented on council.

- **Inexperience of council members in their governance and fiduciary responsibilities**

Councils of universities in South Africa are large and generally comprise at least 30 members of which 60% have to be external members (ie not staff members or students). The large number of universities all seeking appropriately equipped persons to serve on their councils from a limited pool of such people, inevitably means that in some cases persons inexperienced in governance matters and uninformed about higher education's special governance challenges are appointed to councils often with very debilitating consequences.

Proposals are made on reducing the size of councils and on annual council induction and planning workshops as well as on an annual performance appraisal of council.

- **Unacceptable and counter- productive conduct by some council members**

The assessor reports abound in examples of unacceptable conduct of council members involving matters such as interference in operational affairs of the university specifically concerning procurement and tender issues, appointments of staff members and admission of students.

Proposals are made on the development and application of codes of conduct for councils including proceedings for censuring council members who break the code of conduct which each council member should personally sign as an indication of commitment of adherence to its provisions.

- **Adherence to proper meeting procedure**

In a number of cases governance oversight deteriorated to such an extent that proper meeting procedures were no longer adhered to during meetings of council. In particular, matters such as the declaration of interest (including the keeping of a risk register) and the agenda item 'General' or 'Additional matters' or 'Any other business', were sometimes abused to serve narrow and personal interests of individual members or groups of members.

Proposals are made on safeguarding adherence to accepted meeting procedures and management of agendas etc.

2. Relationships between council and the VC and other executive management members

- ### Interactions between council members and the VC and other staff members and students

The assessor reports recount many instances of inappropriate interaction between council members and other staff members or students bypassing the VC in an effort to achieve their wishes often in respect of managerial or operational issues and often of an improper nature in terms of the advancement of their own interests.

Proposals are made on a communications or interaction protocol via the VC or secretary of council's office between council members and staff and students in order to avoid misunderstandings and unnecessary mistrust between council and the VC.

In addition proposals on council approved delegations of decision making and an understanding on the VC's decision making powers in emergency situations as well as the formalisation of performance management processes for the VC by council, are made.

- ### Leadership exercised by VC and members of executive management

In some cases assessor reports highlight inaction by VCs particularly involving taking steps against staff members, especially senior staff members, who have engaged in improper and wrongful actions, and in other cases examples of VCs and executive management members who seem to have applied policies somewhat generously to themselves, as instances of a lack of leadership by VCs.

Proposals are made on the inclusion of the exercise of leadership by VCs as part of their regular performance assessment by council and the possibility of high level executive leadership capacity development for VCs.

3. Ineffectual institutional structures such as senate and the institutional forum

Some assessor reports highlight the fact that a deterioration of governance oversight at council level is often accompanied by a creeping ineffectiveness of structures such as senates and institutional forums resulting in tension between these structures and councils rather than constructive co-operation.

Proposals are made specifically in relation to improving senate and council relationships and collaboration.

4. Management failures and challenges

Assessor reports also mention serious shortcomings and management failures in the areas of financial and HR management as strong contributory factors towards institutional disfunctionality.

In both cases proposals are made regarding the role of whistle blowing processes and the appointment of an ombudsman to assess the validity of complaints from staff and students. In addition further proposals are made regarding the possibility of high level executive leadership training for the CFO and the HR manager in areas such as a service orientation, procurement or supply chain management, people management and communication with others.

Arising from the issues identified above, the existing legal provisions in the Higher Education Act, No 101 of 1997 for the appointment of assessors are evaluated with a view to identifying areas for possible improvement.

5. Reflection on existing legislative provisions for appointing an assessor

In the main proposals are made in respect of Section 45 and Section 41A of the Act.

- **Section 45 of the Act**

The proposals below are made in order to make the interpretation of when circumstances or institutional situations, as discussed in Section 45 of the Act, have reached a point where an assessor should be appointed, somewhat less discretionary on the part of the Minister. Incorporation of the following could be considered:

    i)   A council request for the appointment of an assessor must be taken at a fully quorate council meeting, must reflect a formal majority decision, and must have the chairperson of council and the VC present at such a meeting;

    ii)   Where the Minister does decide to appoint an assessor he/she is obliged to inform the council and VC of the reasons for his/her doing so and give an indication of the information bases used in coming to this decision; and

    iii)   If any student, staff member or a specific institutional stakeholder grouping of an institution complains directly to the Minister about any issue involving the institution requesting his/her direct intervention, the Minister is obliged to first obtain an official institutional response on the issue(s) raised before using any of the information in question (if at all) in coming to a decision on appointing an assessor or not. If the complainant is the VC him/herself the council should be given an opportunity to formally respond to such a complaint, if it so wished.

- **Section 41A of the Act**

Section 41A of the Act makes provision for the appointment of an administrator to take over the authority of the council or the management of the institution under certain conditions including findings in this regard made by an assessor in his/her assessor report of the institution. Such a step represents quite a radical intervention by the Minister and he/she should first be obliged to obtain council and senior management's responses to the findings of such an assessor report before he/she makes a final decision on appointing an administrator.

ANALYSIS OF RECENT ASSESSOR REPORTS OF UNIVERSITIES IN SA

1. INTRODUCTION

In this document the assessor reports of the following institutions are analysed with a view to identifying common themes and issues in these reports in order to guide discussions at HESA on possible ways of strengthening governance and management in higher education in South Africa (SA):

- Tshwane University of Technology(TUT)
- University of Zululand (UniZul)
- Walter Sisulu University (WSU)
- Vaal University of Technology (VUT)
- Central University of Technology (CUT)

The purpose of this report is not to link specific examples of failed governance or management (perceived or real) to particular institutions but to present an overall summary of the most common factors that contributed to such failures as gleaned from the assessor reports for these institutions.[1]

2. BACKGROUND

The various assessor reports vary considerably in detail as well as format although they all present a list of findings and recommendations based on these findings. It is also acknowledged that in some cases institutions may wish to contest some of the findings as, in their view, these may not have been based on indisputable proof[2].

In the majority of cases the problems and difficulties experienced by the various institutions fall into four clear categories:

- Governance failures in respect of council's functioning;
- Fraught relationships between councils and the VC and other members of staff;
- Ineffective institutional structures such as senate and the institutional forum; and
- Management failures and challenges particularly in the fields of HR and finance.

These four categories of matters are discussed *seriatim* next with some tentative proposals on possible ways of improving institutional performance in each case.

3. GOVERNANCE FAILURES IN RESPECT OF COUNCIL's FUNCTIONING

3.1 Chairpersons and deputy chairpersons of councils

- **Problem:** None of the assessor reports specifically single out chairs of councils or deputy chairs of councils as responsible for dysfunctional councils. Nevertheless some of the very serious lapses in governance such as factionalism in councils, involvement in procurement processes by council members to their own advantage,

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[1]It should be noted that the CUT assessor report's findings or some of the findings are being contested.
[2] The objective of the exercise was mainly to extrapolate key issues, at "headline level" from the assessor reports with a view to framing the discussion at the workshop.

non-adherence to generally accepted meeting procedures, poor and sometimes absent record keeping of meetings, exclusive meetings of smaller and not properly constituted groups of council members, members refusing to participate in their individual capacities but as mandated representatives of certain groups, the rushed and procedurally incorrect re-appointment of VCs etc, must be indicative of council chairpersons who either do not have the necessary experience or competence to chair such meetings or somewhere along the line simply lost control of council and its meetings.

- **Background:** Institutional statutes seldom specify anything more except that council chooses its chairperson and deputy-chairperson from among its 'independent' members i.e. non-employees and non- students of the institution. Institutions which supplement their institutional statutes with council and /or institutional rules may describe the procedures to be followed in nominating independent council members as chair and deputy chair but seldom would add anything in terms of desired competencies or experience in governance.

- **Possible approach:** Clearly the chairperson of council, and to a somewhat lesser extent the deputy chairperson of council, plays a pivotal role in the effective and efficient functioning of a council. As is the case with listing desired competencies in specified areas for council members, institutions could consider listing some desired competencies of chairpersons and of deputy chairpersons of council in their institutional statutes although doing so in their council rules or in their institutional rules would be preferable. Possible competencies could be: Extensive knowledge and understanding of higher education sector in general and of the institution in particular, a proven track record in exercising governance responsibilities in other spheres of society, a track record of serving as a council member of a higher education institution for at least 2-3 years, demonstrated standing in the constituent community in which the institution is situated, and a record of personal integrity and ethical behaviour.

Through the Department of Higher Education and Training's facilitation a University Councils Chairpersons Forum (UCCF-SA) was established in 2010.The purpose being to create a forum where chairpersons of council could be briefed on good governance practice, interact on governance challenges experienced at their institutions, and be informed of any new strategies and policies envisaged by the Minister which could have some specific governance implications such as for example, performance reporting by institutions. Unfortunately, this Forum seems to have had limited interaction with the Minister of Higher Education and Training since its inception and is apparently not very well attended.

First, HESA could consider meeting with UCCF-SA as part of a strategy to strengthen this Forum and second, raise the issue of this Forum's status and functioning with the Minister at its next meeting with him.

3.2 Capacity in which members of council serve

- **Problem:** In some cases the assessor reports highlighted conflict which arose in council when members nominated by certain institutional groupings such as senate, SRC, labour, non-academic employees etc refused to accept that they were required to function in their individual capacity as 'experts' rather than as mandated representatives of these groupings. In many instances these mandated positions were at odds with best institutional interests and rather sought to advance narrow sectional interests at the expense of institutional interests. In some cases this even went as far as some of these groupings apparently agreeing to support another's mandated positions at council meetings. In one case a labour union and the SRC actually formed an alliance in order to advance their shared position on council.

- **Background:** Institutional statutes do not always entertain a level of detail such as in which capacity council members are expected to serve. Those institutions in which councils operate in terms of a set of council rules or institutional rules may include such a provision. Senate and the SRC as a rule nominate members of their respective organs to serve as council members. However, some institutions provide for organised labour to nominate members of council while others arrange for all academic employees not being members of senate and all non-academic employees (whether unionised or not) to participate in a nominations process for membership of council. These institutions would probably argue that organised labour's participation in policy matters is restricted to HR policy matters which are usually dealt with in specially established employer –employee structures on HR matters.

- **Possible approach:** One possible approach to resolve this issue could be to require each and every council member to sign a formal declaration that they would participate in all council proceedings as individual experts and not as mandated representatives of a particular sectional grouping. Such a specific provision could also feature in council rules and/or the council's code of conduct. In addition it may be necessary to require each council member to formally undertake to abide by all decisions taken on the basis of a majority vote. Finally, institutions that at present provide for a formal presence on council from organised labour may wish to revisit this position and broaden representation to all academic employees via senate, from those academic employees not –represented on senate, and from all non-academic employees.

3.3 Inexperience of council members

- **Problem:** A number of the assessor reports mention the inexperience of council members in matters pertaining to corporate governance and particularly to issues in higher education governance, as a significant factor contributing to governance failures in higher education. This inexperience mainly manifested itself in council members getting involved in operational issues, in pursuing their own or so-called mandated agendas, in wishing to 'settle scores' with other council members, and

most disturbingly in wishing to influence procurement related decisions to their own advantage.

In addition some of the assessor reports point out that new council members were not subjected to formal induction workshops and that in some cases councils did not have annual planning sessions at which their knowledge and understanding of their functions and of the institution could be strengthened. Neither were new council members informed in a proper and rigorous manner on matters such as the behaviours expected from council members in terms of codes of conduct etc.

- **Background:** At present South Africa has 23 higher education institutions and is soon to have 25. The existing rules on the compositions of councils demand that at least 60% of the council members should not be employees or students of the institution. Depending on individual statutes detailing the composition of councils and specifically on how many DVCs an institution may have, this provision normally results in councils of 30 or more members. If 30 is taken as an average number of council members this means that at least 18 of these have to be independent members in the sense described earlier. This means that for our higher education system approximately 400 independent persons have to be found who have the necessary competencies and expertise to make a constructive contribution to the governance of institutions. In addition the Minister of Higher Education and Training normally nominates up to 5 of these independent members of council. This means that he/she has to nominate a total of approximately 120 such persons for council membership at various points in time. Higher education is only one of many public sectors in which governance bodies are appointed (others are for example science councils, a variety of para-statal organisations and many regulatory bodies) and in addition to the transformation imperatives in our country the net effect of such a large number of governance bodies is simply that suitable persons having 'what it takes' to exercise governance over such complex institutions as universities are very difficult to find.

- **Possible approach:** While smaller councils would not only lead to greater levels of effectiveness and efficiency in the functioning of councils, the main outcome of such smaller councils would be a considerable lessening of the number of independent members required who have the appropriate background and competencies to perform their council duties satisfactorily. In trying to lessen the size of councils it would not be wise to change the 60:40 rule applying to independent and internal members respectively. This would then mean that the number of internal members would have to be reduced. The only way to achieve this would probably be to provide for 1 instead of 2 senate representatives, and 1 instead of 2 SRC representatives. Furthermore it is a moot point whether organised labour should be represented at all on council and whether all academic employees who are not senate members and all non academic employees should not have one representative each on council. A further problem has arisen in that many universities now have up to 3 DVCs who all become council members and thus push up the number of external members that have to be appointed in order to satisfy the 60:40 principle. If a limit of at most 2 DVCs being members of council were to be adopted the total council membership could come down from say 30 to 23 or 24 of

which 14 or 15 would have to be external members. For the entire university system this would then mean that about 320 instead of 400 external council members would have to be found. In the cases where the Minister of Higher Education and Training appoints 5 persons this number could be brought down to 3. Such reductions could play a significant role in avoiding the appointment of persons as members of council who clearly lack the requisite experience and competencies to fulfil their governance functions constructively.

All university councils should have at least one induction and/or planning session per annum where their governance functions are explained, analysed and debated. Typical matters on the agenda of such a workshop would include governance in relation to the King III Report, in respect of the HE Act, the Institutional Statute, and rules of council. Other matters to be covered could include the council's relationship with senate, interaction between the council and the VC and executive management, the role and functions of the various sub-committees of council, council's code of conduct and specifically conflicts of interest, the performance assessment of councils etc. Such sessions should involve all council members and not only new ones and should also serve to build cohesion on councils. To this end the agenda should also include a few council planning matters such as progress with the institution's strategic plan, formulation of council goals and objectives for next 12 month period, report back by VC on general institutional performance in terms of institutional performance indicators etc.

HESA could consider making available to its member institutions a few examples of agendas and relevant documentation for such council workshops.

4.4 Unacceptable conduct of certain members of council

- **Problem:** The assessor reports list a number of examples of unacceptable conduct of some council members. Such conduct relates to matters such as interfering with procurement issues (normally to advance their own interests or those of someone close to them), non-declaration of interest in matters in which they have a direct conflict of interest, promoting factionalism on council by , amongst other, using council meetings to pursue unrelated 'hidden agendas', arranging for exclusive meetings of smaller groups of council members to influence council decisions, by passing the VC in attempts to either overturn some of the VCs decisions or to interfere in the operational aspects of the institution, attempts to isolate the VC and in some cases to oust the VC as he/she is seen as a stumbling block to their efforts to control the institution in terms of their narrow and often personal interests etc.

- **Background:** Managing such forms of unacceptable behaviour by council members is normally not that simple as such behaviour usually only reaches a level of unacceptability over a period of time. In addition council members making themselves guilty of such unacceptable behaviours are often emboldened by the fact that they were initially allowed to 'get away' with it which sometimes makes it difficult to afterwards clamp down successfully on eradicating such behaviours. It is especially difficult to deal with such unacceptable behaviours if such behaviours are not covered in the council's code of conduct or the council rules.

- **Possible approach:** As far as possible managing unacceptable behaviour of council members should occur within the context of council approved codes of conduct, approved meeting procedures, approved rules of council etc. Institutions should thus ensure that all these council approved instruments form part and parcel of every council member's induction package and that council members sign formal written undertakings to adhere to and abide by these council approved instruments. Apart from an annual declaration of interest by each member of council, every member of council should formally declare his/her interest in any matter on the council's agenda at every meeting of council.

  As part of the code of conduct or as part of the council rules, council should establish a small but formally constituted subcommittee (e.g. Ethics sub-committee) which has a majority of external members and which excludes the chair of council and the VC, to judge any possible cases of misconduct of council members in terms of clearly set out procedures in the above governance instruments.

  HESA could consider making available to its member institutions some examples of governance instruments such as codes of conduct, council rules, council performance assessment instruments, meeting procedures etc.

  In addition councils should request executive management to revisit their institutional statutes in order to rectify any omissions or other difficulties in the statute which could contribute towards governance oversights and shortcomings by council.

4.5   Adherence to proper meeting procedure

- **Problem:** In some cases assessor reports reported a breakdown of commonly accepted meeting procedures such as the inadequate preparation of minutes of meetings which even went as far as no minutes at all being prepared for some parts of council meetings, the usurping of agendas by some council members by adding additional items under 'general' which clearly needed pre-documentation to be prepared for proper decisions to be made, decisions accepted by non-sanctioned groups of council members as formal council decisions, chairs and deputy chairs of councils overturning formal council decisions after council meetings, ad hoc exclusion of the VC and the secretary of council in particular on certain agenda items, abnormal amount of time spent on what council members' remuneration should be and even remunerating employees and students who were council members, arranging of large numbers of special council meetings at very high council attendance remuneration rates etc.

- **Background:** In most cases situations as described above arose from a small group of council members pursuing narrow and personally driven agendas being allowed to gain a too dominant position on council and who aimed to undermine the authority of the chair of the council in their efforts to achieve their aims. In addition other council members who objected to procedural irregularities were either silenced or 'worked off' council.

- **Possible approach:** Clearly adhering to commonly accepted meeting procedures is the task of the chair of council or the chair of the various sub committees of council. Nevertheless, **c**ouncil should formally resolve that at all times commonly accepted meeting procedures would prevail. If necessary these procedures should be spelled out in a set of council rules covering some of the issues mentioned earlier. All council members could sign a formal undertaking to respect and abide by these meeting procedures. In addition council could adopt a formal resolution empowering the secretary of council (normally the registrar) to raise issues on meeting procedure at any time when deemed necessary.

  Particularly important is the need for council to adopt a formally recorded resolution on how so-called 'additional items' or items under 'general' in the agenda are to be treated as a lack of clarity on this particular issue has seemingly resulted in abuse by some council members.

4. FRAUGHT RELATIONSHIPS BETWEEN COUNCIL AND THE VC AND OTHER STAFF MEMBERS

4.1 Interaction between council members and the VC and staff and students

- **Problem:** In nearly every assessor report relationships between the council or certain members of council and the VC and in some cases also with members of executive management became fractious and dysfunctional. In some cases council members sided with certain members of executive management against the VC and in other cases relationships between the chair of council and the VC became so strained as to affect the governance and management of the institution. In a few cases some council members made it their mission to remove the VC before the completion of his/her contract.

  In some cases no protocol seems to have been in place for regulating interactions between council members and staff and students resulting in council members approaching staff directly for the performance of certain favours or duties without the VCs knowledge. These interventions seemed to occur particularly in relation to procurement and tenders, admission of certain students etc.

- **Background:** Some of the tensions resulting between council or some of its members and the VC can probably be ascribed to sheer maliciousness of council members who could not get their own way with regard to some of the improper interventions mentioned above. In some cases VCs may have contributed towards the escalation of these tensions through certain actions and this is discussed in the next section. In other cases these tensions were based on rumours (often later proved to be false) or simple misunderstandings resulting from infrequent and incomplete communication between the council and the VC or executive management. In addition chairs of council who were simply too busy to pay adequate attention to their relationship with the VC could also have played a role in the break down of constructive relationships. In some instances clear rules on the delegation of decision making authority between council and the VC and executive management were lacking causing some council members to feel that the VC and executive

management may have overstepped their levels of authority. Further, the inability of some council members to distinguish between their role in governing the institution and the VC in managing the institution was a cause of friction in quite a few cases.

A major difficulty in some institutions arose from the ways in which councils responded to complaints by staff and students concerning the performance of the VC and/or executive management. These responses ranged from ignoring such complaints, downplaying them or according them an untested validity and authenticity. Anonymous complaints in particular require very carefully thought through treatment.

- **Possible approaches:** Interaction between council members and the VC and with other members of staff and students cannot normally be regulated in terms of codes of conduct or council rules. In some cases a formal understanding between the chair of council and the VC, and between council members and the VC on communication arrangements can help in avoiding misunderstandings and unnecessary tensions. Such arrangements could, for example, involve council members communicating with staff and students of the institution only through the VC's office or through the office of the secretary of council (normally the registrar). They could involve an undertaking by the VC to keep council members informed of any institutional developments which may occur between council meetings and which may be of note through special VC communiqués. Most institutions maintain some or other electronic media clip service and if required, council members could be included on the distribution list.   In addition it may be necessary for the VC to meet the chair and deputy chair of council from time to time to brief them on institutional matters which could be of concern to them.

  Any issues concerning the VC's and council's decision making powers should be resolved through a council approved delegations document which clearly sets out which matters fall under council's direct decision making authority and which have been delegated to the VC who in turn would normally delegate some functions to other officials in the institution as well. It is crucial that such a delegations document is approved by council itself and that council as well as the VC strictly function according to such a decision making framework.

  Some issues which can occur in universities are difficult to foresee and can normally not be included in such a delegations document such as natural calamities (fire and floods), serious criminal activity (robbery etc), forms of student unrest on campuses, etc. In order to cover these unforeseen events it is prudent that the VC and the chair of council (and/or deputy chair of council) reach an understanding on decision making in cases such as these as such situations usually require flash decisions and do not allow for first arranging a special council meeting or for pre-decision consultation etc.

  In some cases assertions were made by council members regarding the VC's performance. Both the VC as well as the council itself should be subject to some form of formalised performance assessment. In the case of the VC he/she should sign an annual performance agreement with the council which should clearly

stipulate council's expectations of the VC in terms of goals and objectives, which if at all possible, should be measurable. Council could also establish a small committee to monitor the VC's performance in terms of the performance agreement on behalf of council (usually the chair, deputy chair and one other independent member of council) and report back to council at least twice annually. This will avoid a build up of tensions related to the performance of the VC while also ensuring that the VC is assessed in terms of a set of council approved goals and objectives and not in terms of any other subjective measures.

Similarly council should assess its own performance at least once a year through an appropriate assessment instrument. The results should be analysed scientifically and the outcomes of such an assessment should be formally tabled and discussed at a council meeting.

4.2 Exercise of proper leadership by VC and executive management

- **Problem:** In some instances council members either directly or indirectly accused the VC and sometimes other members of senior management, of not exercising proper and accountable leadership. This occurred mainly in areas where councils felt VCs were reluctant to exercise decisive leadership in taking action against fellow members of executive management such as those having allegedly engaged in unbecoming conduct, other staff or students who were guilty of some or other malpractice and in not doing so allowed these situations to escalate to a point where resolving them became difficult if not impossible. In other cases council members felt that the VC (and some other members of management) interpreted specific policies applicable to them in such a generous manner as to make themselves (and the council) open to blame from within the institution of transgressing the spirit of these policies and possibly also the actual letter of such policies. In other instances the VC and executive management seemingly failed to implement formal council resolutions.

  In other cases it was argued that some VCs were excessively bureaucratic and officious in their approaches towards their immediate colleagues on executive management. As mentioned before in some cases some council members sought to utilise irretrievable breakdowns in relationships between the VC and fellow members of executive management for their own ends.

- **Background:** Clearly leadership by a VC cannot simply be exercised in terms of a strict application of rules and policies only. As important as the setting of an example in adherence to and application of policy prescriptions by the VC is, a VC should also be seen to act fairly and decisively and without fear or favour in the best interest of the institution always maintaining a high moral ground even at a personal cost to him or herself. In particular VCs cannot expect behaviours from staff members and students which they themselves are not willing to demonstrate. While this dictum applies to all areas of institutional activity it applies particularly in areas concerning circumspect financial expenditure.

- **Possible approaches:** The VC's leadership performance should form a specific component of his/her performance development and assessment by council. The council's committee responsible for managing the performance of the VC or the chair

of council should have regular discussions with the VC on any leadership challenges or issues needing attention. If required councils could consider providing VCs with an opportunity to undergo some formal high level executive leadership development programme.

5. INEFFECTIVE INSTITUTIONAL STRUCTURES SUCH AS SENATE AND IF

- **Problem:** A few assessor reports mention that as council's became more and more dysfunctional other university structures such as senates and institutional forums seemingly also lost some of their effectiveness. This may have occurred due to communication misunderstandings arising between council and these structures.

- **Background:** The relationship between council and senate and between council and the institutional forum is set out in the Higher Education Act, No101 of 1997 and is usually covered in somewhat greater detail in the institutional statue or in council or institutional rules. Senates at South African universities in general have a well-established track record as custodians of the academic endeavours of institutions and if they are either not allowed to fulfil this function or their role is downplayed or even disregarded it can only affect the academic standing of such an institution negatively.

  Institutional forums on the other hand have a fairly recent history in South Africa and in many cases have had difficulties in finding a true and meaningful role for themselves apart from advising council on high level appointments. Their non – constructive functioning cannot be directly linked to council governance challenges as they even enjoy limited support and recognition in some institutions which function under very high levels of council governance and fiduciary oversight.

- **Possible approach:** Where it is necessary universities should ensure that the council's relationship with senate and vice versa is set out clearly in the institution's statute or institutional rules. Similar to senate having some form of representation on council, council should also be represented on senate. Furthermore providing for a specific agenda item on council's agenda incorporating matters referred to council by senate and on senate's agenda for reporting on council decisions etc represents a sound way of ensuring that misunderstandings and distrust is avoided between these two structures.

  Finally, joint council/senate committees such as honorary degree committees also present a mechanism for strengthening relationships between these two structures.

6. MANAGEMENT CHALLENGES PARTICULARLY IN THE FIELDS OF HR AND FINANCE

In one particular case management failures in the registrar's office were also highlighted as a contributory factor towards institutional disfunctionality. Most of the proposals made with regard to the fields of finance and HR would also apply to the registrar's function and as it represented an isolated case, it is not discussed separately.

6.1 Management challenges in the field of finance

- **Problem:** Nearly all the assessor reports raised some issues in respect of financial management. These issues cover a wide range of matters ranging from non-adherence in the institution to internal financial control procedures- sometimes even by staff within the Finance Section- with no consequences for those involved in such practices; collusion between members of the Finance Section and some council members on influencing procurement and tender decisions; staff members in the Finance Section being too afraid to stand up to and oppose interference in financial matters by council members, CFO's being allowed to play a too dominant role in the institution even in non-financial matters while in other cases they were not members of the executive management , and poor follow up on allegations of fraud and corruption in institutions.

- **Background:** Financial management at universities, while always being complex, has become even more so as universities have become more aggressive in pursuing diversified sources of income, in commercialisation activities, in continually seeking the curtailing of costs, in pursuing ever more sophisticated investment strategies, in meeting increasingly stringent accounting and reporting requirements, and in fighting fraud and corruption. At the same time university budgets now easily exceed amounts of R1 billion and in some cases amount to figures of up to R4 billion or more. In some cases financial management and control policies and processes have simply not kept up with these increasing complexities and in other cases CFOs themselves and some of their staff have found themselves out of their depth in this difficult and complex environment. In other cases internal audit capacity has not been sufficient to cope with the many simultaneous audits arising from compliance difficulties encountered in this complex environment.

- **Possible approaches:** Of prime importance in this regard is the optimal functioning of the council's audit committee in terms of its charter with regular feedback to council itself, and of the external and internal audit functions. Where in house internal audit sections cannot cope with the workload, use should be made of supplementary internal audit services sourced from outside the institution. VCs should in general meet with the head of internal audit once a week for a short briefing meeting and once every month or two with the external auditors for briefing meetings with them.

  Many institutions have implemented whistle blowing policies and measures but these are not likely to work well unless the reporting point is a neutral point and one which is not within the institution itself. Such services can be procured from outside service providers. In addition many institutions have found it expedient to appoint an ombudsman who should preferably be an outside person with some legal background who understands the role which adherence to approved policies and practices should play in an institution such as a public university and who understands the importance of distinguishing between hearsay and hard factual evidence.

  Many universities find themselves between the proverbial rock and hard place in respect of finding CFOs who are up to the challenges of the task in a university. On

the one hand internal incumbents sometimes have not kept pace with the increasing complexities of the job, while experiments at some institutions in bringing in private sector CFOs at a very high cost of remuneration, have met with mixed success as these incumbents generally struggle to adapt to the very different university environment and its practices. Whether experience in a university environment outweighs the possible 'cutting edge' which a CFO from the private sector may bring is a moot point. One possible way forward would be for universities to arrange for their CFOs to undergo some high level executive training programme focussing on service orientation, procurement / supply chain management, human relationships, and people development and performance management.

Finally, universities in which it is not already the case could consider making the CFO a member of the executive management in order to promote synergy of decision making and ownership by all executive management members of decisions at this level.

6.2 **Management challenges in the field of HR**

- **Problem:** Most of the assessor reports stress the inadequate levels of service from the HR section of institutions as a significant contributory factor in turbulence experienced at the universities which were assessed. Difficulties encountered varied but encompassed matters such as poor labour relations advice in staff disciplinary cases, inadequate guidance on procedural matters in the selection and appointment of staff, inability to guide the institution properly on restructuring issues emanating from mergers and incorporations, allowing interference by council members and sometimes others in the institution in new appointments leading to allegations of favouritism and nepotism, not developing an appropriate minimum menu of HR policies and processes and specifically not developing an institutionally applicable remuneration policy based on clear job descriptions and accompanying job gradings, and not ensuring an adequate flow of information to council's HR committee in order for it and council to fulfil their proper fiduciary duties.

- **Background:** Similar to the case involving financial management HR management has also become a much more complex environment over the past decade or two in universities. Much of this complexity is due to a new labour relations dispensation, a prevalence by staff members to resorting to litigation as a means of solving their problems, the pressures on speeding up transformation of staff profiles in terms of race and gender, and in some cases the too strong position which some labour unions were allowed to take in a variety of institutional matters outside the field of labour relations.

- **Possible approaches:** The approaches possibly open to universities in this regard are very similar to those discussed earlier in relation to financial management and will thus only be mentioned briefly.

Of major importance is the optimal functioning of the council's HR committee. This committee should specifically have some members who are experienced and

knowledgeable in the field of HR. The VC should meet with the head of HR at least once a week to be briefed on all pertinent HR issues in the institution.

As mentioned before for the field of financial management, working whistle blowing policies and practices are vital in this field, as is the appointment of an ombudsman.

Finally, as strange as it may sound HR managers should possibly also be expected to undergo high level executive training programmes with a specific emphasis on communication with people, working in a management team, developing a service orientation etc.

7. LEGISLATIVE PROVISIONS FOR THE APPOINTMENT AND FUNCTIONING OF ASSESSORS OF HIGHER EDUCATION INSTITUTIONS

In this section, the existing legislative provisions in the Higher Education Act, No 101 of 1997 for the appointment and functions of assessors are analysed with a view to identifying any improvements in these provisions. In doing so a number of 'process' difficulties are identified and possible solutions to these difficulties are suggested.

The appointment and functions of an assessor are set out in Sections 43 to 49 of the Higher Education Act, No 101 of 1997 (the Act). The various sections in the Act are covered next.

- **Section 43** covers the appointment on an independent panel of assessors by the Council on Higher Education (CHE). These panel members may not be members of the CHE and must have a knowledge and experience of higher education. Panel members are appointed for two years but may be re-appointed by the CHE.

   This provision does provide a measure of safeguarding of unwanted political interference by the Minister of Higher Education and Training (the Minister) in the affairs of a university as he/she has no say on the composition of the panel. The Minister may however choose any panel member from the list provided that person meets the requirements set out in Section 44.

- **Section 44** covers the appointment of an assessor for an institution (s) by the Minister of Higher Education and Training (the Minister) from this panel who must be independent of the institution(s) concerned. The Minister, if practicable makes this appointment after consultation with the council of the institution.

   Section 44 allows the Minister a considerable amount of freedom in decision making on the appointment of an assessor as he/she is only bound by an 'after' in contrast to an 'in' consultative restriction with the council of the affected institution(s) which is further qualified by 'if practicable'. This is not described further and in a contested case the Minister thus would only have to show that he/she applied his/her mind to the practicalities involved and advance reasons why this was deemed not have been practical. In any event, even if the Minister were to be challenged successfully on the issue of 'if practicable' he/she is only bound by an 'after' consultation restriction which in essence means informing the council that he/she intends following this course of action.

Furthermore, it does not seem possible to accommodate any misgivings by an institution on a particular assessor assigned to assess their institution in any formal manner- 'players' can hardly be expected to choose their own 'referee' according to their preferences. Informally an institution may of course raise particular issues concerning a specific assessor with the Minister who would however not be bound in any way to consider such matters.

- **Section 45** covers the circumstances under which the Minister may appoint an assessor. This can occur if:
  i)   The council of the institution makes such a request to the Minister;
  ii)   Circumstances arise at the institution involving serious financial or other maladministration or which undermine the institution's effective functioning;
  iii)   The council of the institution has failed to resolve such circumstances; or
  iv)   The appointment is in the interests of higher education in an open and democratic society.

Clearly the Minister has to apply his/her mind in each of the four possibilities mentioned before. At this point in time it is not clear on which information the Minister bases his/her decision on appointing an assessor to an institution. It is common knowledge that the Minister receives many reports, letters, documents, complaints from students, staff members, labour unions, possibly even council members and other stakeholders of institutions on a variety of matters some of which may be true and some of which may not be true. In the past an official or two of the DHET would normally visit such an institution to validate such information and then make a recommendation to the Minister. Due to capacity constraints in the DHET this has not been happening as robustly as it should in the past year or two.

In a few isolated cases the CHE's HEQC had completed institutional audit reports at the time when such 'complaints' to the Minister had reached an unusual level of intensity. In these cases these institutional audit reports served as an independent and objective assessment of institutional challenges and difficulties and formed a more defensible basis for a decision by the Minister to appoint an assessor. Unfortunately the timing of these institutional audit reports was entirely fortuitous in terms of a decision having to be made in respect of appointing an assessor.

Neither would it work out if one required a CHE HEQC audit report to be completed before such a decision is made by the Minister as these institutional audits are based on an institutional self –assessment which can easily take up to a year. In any event the HEQC's next audit cycle is likely to cover teaching and learning only and will not constitute a wide ranging institutional report as was the case in the previous cycle.

Clearly the Minister has a very large amount of discretion in making a judgement on whether the information at his/her disposal warrants the appointment of an assessor – this is particularly the case with (iv) above where he/she has to decide whether appointing an assessor would not be in the interest of higher education in an open and democratic society. It is not clear what role media coverage of institutional events could play in such a decision.

Interestingly the Act specifically makes provision for council to request the appointment of an assessor but does not mention a similar possibility for the vice-chancellor in this regard. There are some fundamental differences: The council represents a collective body while the VC represents an individual, the council constitutes the formal legal person of the institution while the VC does not despite being the accounting officer. In any event granting the VC such a right despite these fundamental differences could constitute a double edged sword in the sense that it could easily lead to perceptions that councils and VCs were in fact part of two potentially adversarial institutional groupings rather than functioning as an integrated whole. This, however, can be debatable, particularly in the context of a regulatory uncertainty.

A few proposals to make the interpretation of when circumstances or institutional situations have reached a point where an assessor should be appointed somewhat less discretionary on the part of the Minister could be the incorporation of the following:

i)   A council request for the appointment of an assessor must be taken at a fully quorate council meeting, must reflect a formal majority decision, and must have the chairperson of council and the VC present at such a meeting;

ii)   Where the Minister does decide to appoint an assessor he/she is obliged to inform the council and VC of the reasons for his/her doing so and give an indication of the information used in coming to this decision; and

iii)   If any student, staff member or a specific institutional stakeholder grouping of an institution complains directly to the Minister about any issue involving the institution, the Minister is obliged to first obtain an official institutional response on the issue before using any of the information in question (if at all) in coming to a decision on appointing an assessor or not. If the complainant is the VC him/herself the council should be given an opportunity to formally respond to such a complaint, if it so wishes.

- **Section 41A** of the Act makes provision for the appointment of an administrator to take over the authority of the council or the management of the institution under specific conditions including findings in this regard made by an assessor in his/her assessor report of the institution. Such a step represents quite a radical intervention by the Minister and possibly he/she should first be obliged to obtain council and senior management's responses to the findings of such an assessor report before he/she makes a decision on appointing an administrator.

8   CONCLUSION

The complexity of the issues raised in this document that the HESA Board has to grapple with, as it seeks to formulate a view on the matter, underlines the fact that there is no silver bullet for dealing with real or imagined failures of governance and management at universities. There are no ready-made templates to follow, in part because each institution has its own peculiar set of circumstances within which it finds itself. For this reason, the debate has to be cautiously entered, mainly to enable the sector to learn from itself. There is

no shortcut. It is hoped that the case study presentations by two Administrators will help to enrich the discussion.

Ends