

Annual review of the effectiveness of Court: Session 2020/2021

1. Introduction

All Boards and Governing bodies should regularly review their effectiveness, and the Scottish Code of Good HE Governance requires the Courts of universities to do so annually, and, in that context, both to measure compliance with the Code and performance against Court’s Statement of Primary Responsibilities. At its meeting in June 2015, Court agreed that it should consider an evaluative annual report on quantitative and qualitative aspects relating to the conduct of Court and its committees in the preceding academic year, as set out in the diagram below, and that a summary should be included in the Annual Report & Financial Statements.

This is the sixth such report and it is published on the University’s website.

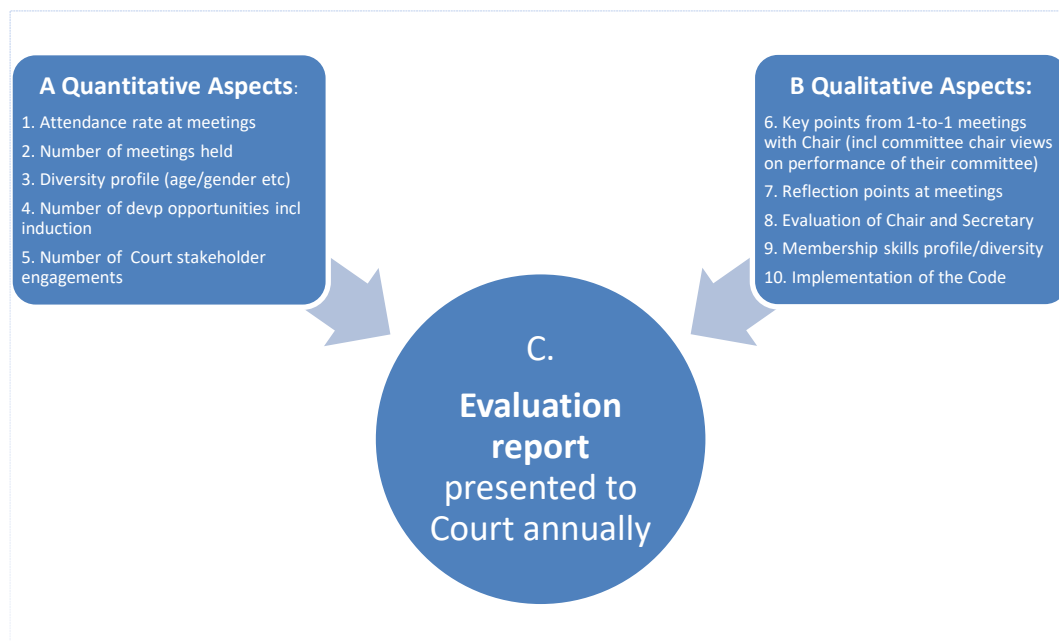


Fig 1: Approach to Annual Court Effectiveness Evaluation at Abertay

2. QUANTITATIVE MEASURES

2.1. Meetings and attendance

Session 2020/2021, like part of the previous session, was disrupted by the COVID-19 global pandemic, which necessitated the transition from in-person to online meetings in line with Scottish Government guidelines to work at home and/or reflect periods of national lockdown.

The number of meetings of Court and its committees and mode of delivery are set out in the following table:

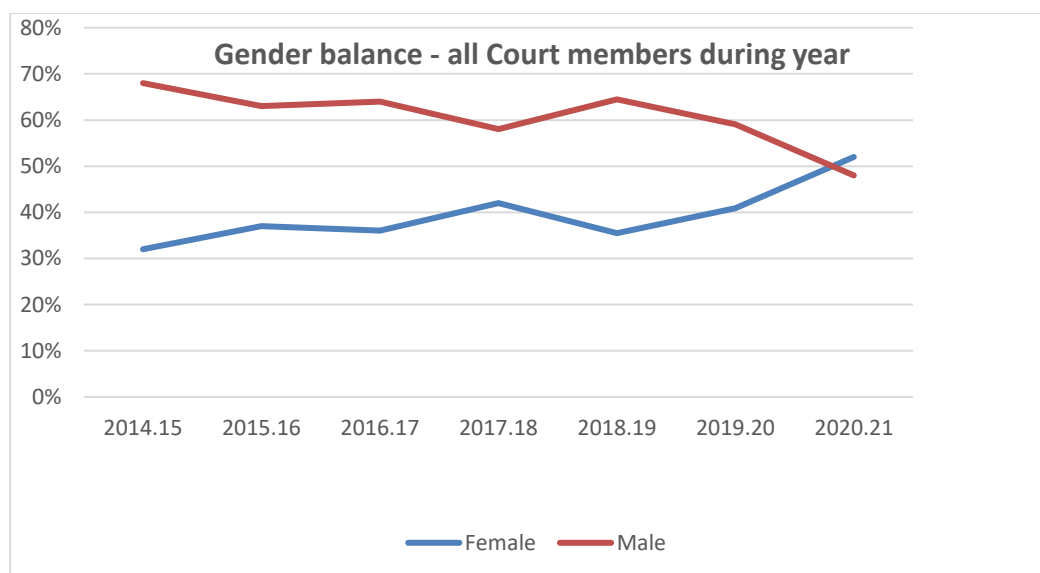
Court and its committees	No of meetings	Mode of delivery
Court	5	100% On-line
Audit and Risk Committee	4	100% On-line
Chair's Committee	5	100% On-line
Finance and Corporate Performance Committee	5	100% On-line
Governance and Nominations Committee	4	100% On-line
People, Health and Equality Committee	5	100% On-line
Remuneration Committee	2	100% On-line

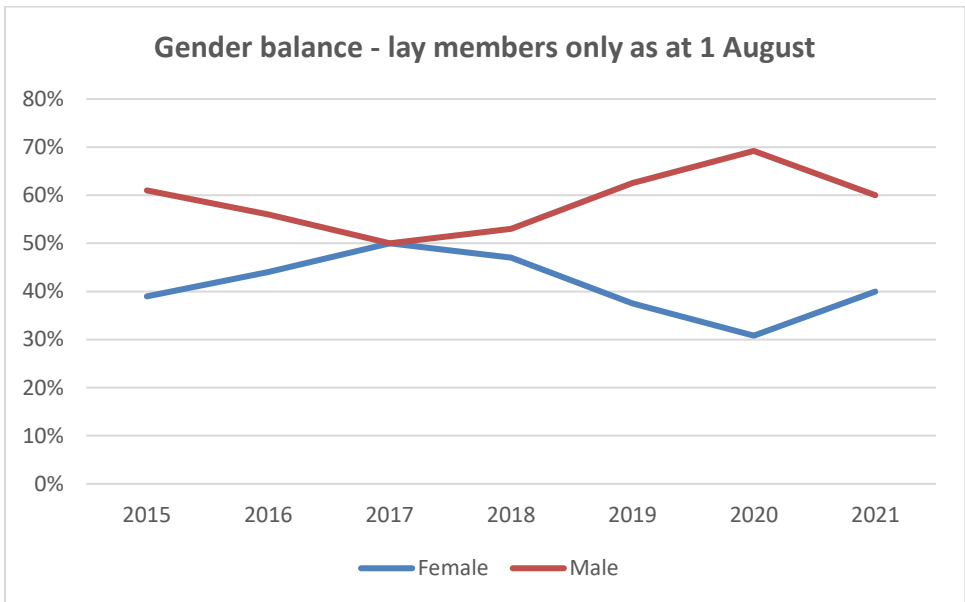
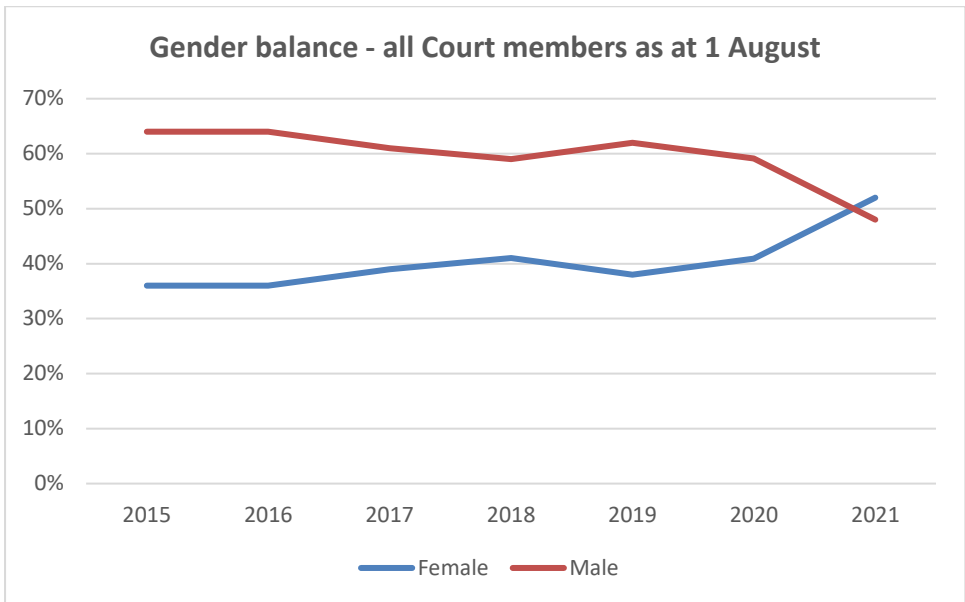
Compared with session 2019/20 attendance (86.4%), overall attendance at Court and its committees improved significantly to **92.7%**, perhaps reflecting the ease by which people can take part in online meetings. Indeed, members have suggested not returning to face-to-face meetings on campus, post-COVID, as a means of making time, financial and efficiency savings. However, while committee business can be undertaken on-line, there are 'softer' aspects of in-person meetings that need to be considered (members reading body language; pre- and post-meeting discussions etc).

During 2021/22, Court meetings are being held in person, while committee meetings are still on-line (with the minor exception of one committee where the chair visits the University and is joined by two senior officer members), but this will be reviewed in early 2022.

2.2. Membership profile

Gender Balance:





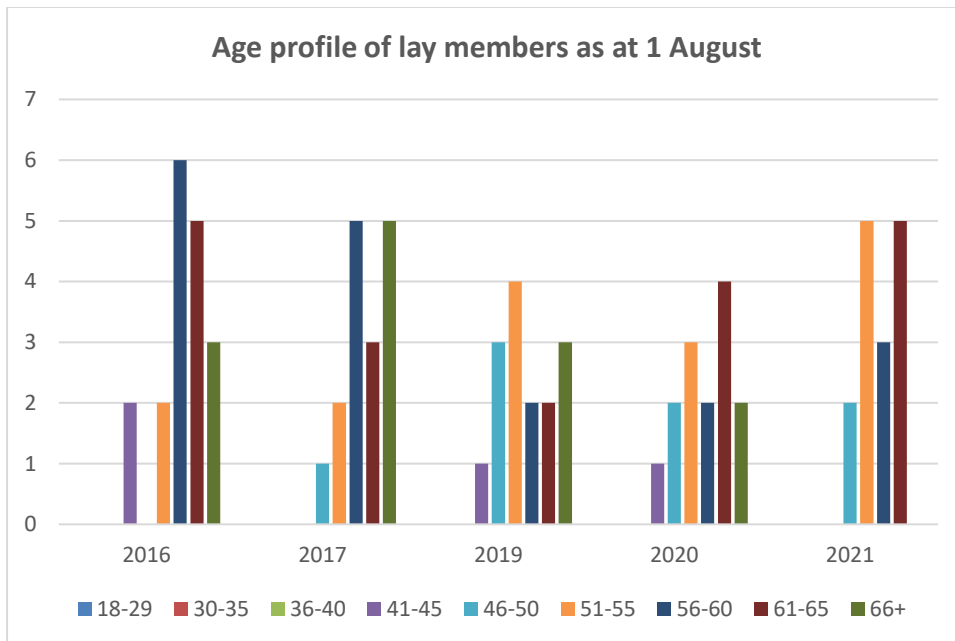
Summary:

The gender balance overall and for lay members (the membership appointed directly by Court) has improved in terms of female members of Court overall.

For the first time in the history of the University, Court is predominantly female, with more elected and nominated female members.

This is not quite the case for the lay (independent) members of Court, although a search for two new members targeted women and was successful in that regard and the balance between men and women in this category has been restored to the 2019 figures. The balance will improve further from 1 January 2022 when a new female member takes up her role – replacing a male governor (balance will then be 47% female/53% male).

Age profile of independent (lay) members:



Summary:

The age profile of lay members (those appointed by Court) in recent times (about 2017) had come to cover a wider range than in previous years when it had been skewed towards those aged 56 and over. The age group 66+, which was common in past years, is no longer reflected in the membership. As the total number of independent members has reduced from max of 18 to max of 15, the range of ages narrowed and only age groups from 46-65 now appear.

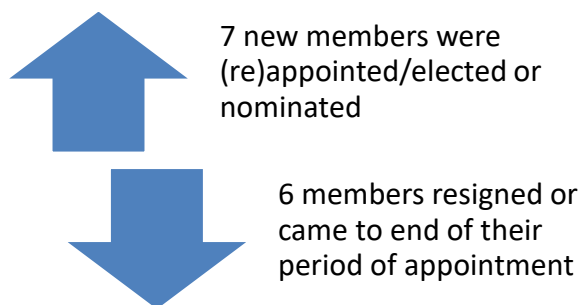
When vacancies arise, Court should consider targeting individuals who are in younger age groups (up to age 45) to address this.

2.3 New appointments:

During the session (31 July 2020 to 1 August 2021), there were changes in membership, as follows:

- 2 independent members stepped down having completed their maximum 3 terms of office.
- 2 new independent members were appointed by Court and 1 former independent member – who had left owing to Covid-19 related workload – returned to membership of Court.
- 1 staff union-nominated governor retired in December and 1 new staff governor was nominated by the local Unite union in their place.
- 1 elected staff governor left the employment of the University and 1 new staff governor was elected in their place.
- The Student President and the Student Vice-President became nominated members under the governing order, replacing the 2 outgoing student governors.

In summary:



2.4 Development opportunities:

- 6 new members had an induction session delivered by the University Secretary¹
- 1 staff governor attended the AdvanceHE 'Role and Responsibilities of Staff Governors' programme in November 2020
- 2 student governors attended the Advance HE 'Student Governors' session in January 2021
- 2 members (1 staff governor and 1 lay governor) attended the AdvanceHE 'Scottish Governance Symposium' in May 2021
- The Trustee Week 2020 was promoted to all Court members; with links provided to information resources for trustees of charitable bodies in Scotland.
- Visits to meet with staff and student on campus often contribute to governors' development; but there were no on-campus visits during this period owing to the pandemic. A virtual meeting was arranged, however, for the Chair of Court and the committee chairs with a mixed group of staff (14) in November 2020 and this was found to be very helpful.

2.5 Engagement with stakeholders:

As noted above, on-campus activities were curtailed by the Covid-19 pandemic, although Court members (especially the independent members) had the opportunity to join on-line events such as meetings for all staff and all students held by the Principal; the stakeholder meeting with staff mentioned earlier; and virtual graduation and prizegiving celebrations.

3. QUALITATIVE MEASURES

3.1 Diversity:

Court aims to have a diverse membership in terms of **gender**. For those positions appointed by Court (i.e., the independent or lay members) it aims to have at least 40% male or female and must have the objective – under the terms of the Gender Representation on Public Boards (Scotland) Act 2018 – of having 50% women among independent members.

In session 2017/18 the objective of gender balance of 50%/50% was met for the lay membership; however, the changes during session 2018/19 in terms of departures and appointments meant that the balance was again skewed towards men. During session 2019/20, two female members (one lay member and one nominated member) demitted office, affecting the gender balance still further.

In the year under report (2020/21), Court sought to address this through a targeted recruitment exercise noted earlier and this has improved the gender balance under the lay membership, however it requires to be retained as a focus for future recruitment/appointments.

On **age** profile amongst lay members, the skewed picture of a few years ago (where most lay members were over 60) had improved such that there was more even spread of age range. During 2019/2020, there were fewer lay members over 60, compared to those under 60; and this trend

¹ One came back to Court after a short period of absence so an induction was not required.

continued during the year under report such that there were five lay members over 60 and ten under 60. Nonetheless, attempts have been made to attract younger people; for example, through direct approaches to local businesses, who may feel that allowing younger colleagues to take on such voluntary activity would also benefit their organisation; however, it did not result in any applications.

Since there are no lay members aged 45 and under, this remains an issue for Court to monitor and address in future recruitment rounds.

Information on other aspects of diversity is not included as numbers are too small, however, Court is aware of the need for diversity of ethnicity as well as gender and age and welcomes individuals with other protected characteristics as well as diverse experience and skills. During the year of the report, the University's Lead Voices – staff volunteers representing the range of protected characteristics, were also invited to consider how diversity could be enhanced on Court and this discussion will continue.

Further consideration should be given to addressing ethnicity and other aspects of diversity in future recruitment of lay members and in liaison with nominating groups, should ask that this be highlighted to constituencies and that the University reaches out to relevant groups externally.

3.2 Feedback from members at meetings of Court and with Chair

During session 2020/21, some governance concerns were raised by Court members, which led to a meeting with the Chair and committee chairs to discuss these and agree how to take them forward with the Executive Group of the University; and was subsequently discussed at a meeting of the Chair's Committee.

One arose from two highly critical internal audit reports and related matters, where there was a concern from chairs of some committees that management was not aware of the problems before the audit and, in one case, had reported potentially misleading information to committees, had not closed loops with committees, and had not provided a report identified by one committee for almost 24 months.

On the latter issue, a review was undertaken by the University Secretary at the request of the Governance and Nominations Committee and this produced recommendations for changes to approach that were accepted in November 2021. Although the recommendations were made in the session *after* the period of this report, they relate to the session in question and so are provided here.

Lessons learned for future for committee support from management

1. *Actions that are overdue should be flagged further within the action plan and, if the committee has not agreed to an extension or is not aware and understanding of any extenuating circumstances, then the matter should be reported to the Executive Group at one of its formal meetings.*
2. *Reports to Court committees should be written rather than oral (and oral only exceptionally) especially when they relate to key risk areas.*
3. *Unapproved minutes (once seen by the Chair) will be sent electronically to all members at an earlier point before the next formal meeting.*

4. *Senior managers must be reminded of the need to provide information (reports etc) requested by Court and its committees on time or have a clear plan in place for any requested extension of submission date; and Governance team empowered to be able to challenge when delays are being suggested/intimated by the managers or ensure that the chair is content with the suggestion.*
5. *When committees request a report as a matter of urgency, the Executive Group (particularly the Principal and/or Chair of Court) should be apprised so that a collective response can be provided and if necessary, the matter considered by the Executive Group and/or Chair's Committee. The committee chair should be kept informed of action taken.*

The second issue related to the adequacy of performance management within the University, and this prompted a useful discussion/debate at Court and subsequent open meeting for any Court members interested. The meeting took place and included the Principal, Vice-Principal and Court members. It was noted subsequently that this had been an open and wide-ranging discussion, which encompassed items such as identifying and monitoring critical performance areas, line management responsibilities and how to approach lessons learned. *It was agreed this topic would be incorporated within the University's People Strategy as it is developed during session 2021/22.*

In relation to the critical audit reports, Court put in place more frequent monitoring than is usual to ensure that management actions were being implemented in a timely fashion.

A third area of feedback from some members of Court related to the support provided to members of staff who less frequently attend Court committee meetings, where it was felt that there was inadequate understanding of the scope/remit of Court committees, and it was agreed that management should introduce a method of preparing these members of staff to be able to present their papers with rigour and understand the right of Court committee to question management action. *In response to this observation, a new approach to briefing staff is being prepared.*

3.3 Chair's discussions with members

The Chair seeks, so far as possible to meet informally with all Court members each year. This has often taken place around regular Court or committee meetings. One of the consequences of the restrictions in place during the 2020/21 session has been to significantly restrict the ability of such meetings to take place. The Chair however remains available to discuss any issues or concerns that any member of the Court may have by telephone or other electronic methods of communication. As in past years such issues (other than those addressed elsewhere in this report) have been few. The Chair (to make up for the lack of informal discussions at face-to-face meetings) where necessary has been in contact with the Chairs of committees to review particularly significant issues.

In addition to informal discussions referenced above, the Chair has a programme of formal discussions with Court members (other than *ex officio* members). The ability to do these on a face-to-face basis in the 2020/21 session has not been without difficulties but meetings have been held with 9 members. The consensus view was that the University had coped well with the pandemic, governance arrangements had continued to work well and that - while meeting electronically caused challenges - governance remained effective. There was a real desire to hold Court meetings in person where possible (despite a recognition that meeting remotely could be time effective and minimised travel). While there were understandable concerns about some of the issues referenced elsewhere (albeit with a recognition that in any organisation such issues would from time-to-time arise) the general view was that issues having been identified they had been dealt with effectively, lessons had been learned and the appropriate and necessary actions taken in a timely manner. Some members felt it was possible that the inability to have face-to-face meetings may have contributed to or exacerbated these issues.

In addition to the meetings with lay members, the Chair had an introductory discussion with the new student members of Court prior to the first meeting of Court using electronic means.

3.4 Evaluation of effectiveness of Chair

Following the designation of one independent member as the Court 'Intermediary' in April 2014 and in line with the agreed procedure, there was an opportunity at the meeting of Court in November 2020 for the Intermediary to lead a discussion on the effectiveness of the Chair. The context for this discussion was the Court-approved 'Chair of Court: Role and Responsibilities' document. Members of Court confirmed that they felt that the Chair was very effective in his role; and at the end of the session, Court confirmed the continuation of the Chair in the role for a second three-year period.

3.5 Engagement with stakeholders

Since the move to online governance in April 2020, Court (through the chairs) has held several on-line meetings with staff and students and there was one such meeting in November 2020 as reported earlier.

Court members continued to be invited to attend meetings of Senate as observers and similarly Senate members were invited to observe Court meetings. During the session, only one staff member attended Court meetings as an observer (not including staff invited routinely such as the Director of People Services). This may have been owing to the pandemic.

4 lay members of Court attended meetings of Senate (one on two occasions) and 2 staff members of Court and 1 student member of Court attended also; so, there was a good level of interest from Court in the work of the main academic committee of the University.

No public stakeholder event was held, however, owing the pandemic. It is intended that the next such event will take place in 2021/22 at the point at which the new Principal can be introduced.

3.6 Meeting the principles of the Scottish Code of Good HE Governance

The revised Code was published in October 2017 and work was undertaken, overseen by the Governance & Nominations Committee, during 2017/2018 to map current practice against the revised Code and identify areas for action. During session 2019/20, the Governance & Nominations Committee reviewed the following Court documents in the context of the Scottish Code of Good HE Governance:

- Role of Chair of Court
- Role of the Court Intermediary
- Role of the Secretary
- Role of the Principal

In session 2020/21, Court, through the Governance and Nominations Committee and the Governance Team, began planning for the scheduled externally facilitated review of the effectiveness of Court which will take place in session 2021/22.

3.7 Implementation of, and compliance with, the Scottish Higher Education Governance (Scotland) Act 2016

Significant work took place during session 2018/19, through the Governance and Nominations Committee, to implement the requirements of the above Act. The Act required several substantial changes to the governance of the University including a new statutory instrument (governing order) for the University and associated new rules for the nomination of new categories of member of Court and the establishment of a new Senate membership. The new governing order was developed

by the Scottish Government Legal Directorate in partnership with the University (University Secretary and University legal advisers) and was approved by Court, by the Privy Council by the Scottish Parliament and by the Office of the Scottish Charity Regulator allowing it to come into force on 1 September 2019. During session 2019/20, Court approved consequential revisions to the Standing Orders of Court and the Scheme of Delegation, as well as rules for the election of staff and students to Court. There were no further changes required arising from the Act during the session under report; however, the Scheme of Delegation is having a substantive review during session 2021/22 to ensure that it remains fit for purpose and reflects changes to aligned items including the University's Financial Regulations.

3.8 Meeting the primary responsibilities

An audit of corporate governance and whether the University met the requirements of the Financial Memorandum with the Scottish Finding Council was conducted in 2018/19. Several elements of good practice were identified, as were areas for improvement in relation to:

- Explicit mention of compliance with the SFC Financial Memorandum within the Scheme of Delegation of Court and the Statement of Primary Responsibilities.
- Consistent use of Action lists and annual workplans for all committees of Court

These recommendations were implemented during 2019/20.

4. SUMMARY EVALUATION

Based on the above, there can be confidence that Court continues to be effective. Attendance is very high and all members participate in actively considering items; members of Court engage in development opportunities; and executive officers are constructively challenged on matters that are considered through Court and its committees including through the internal audit programme of work. There are some further areas of focus for session 2022/23, and this will likely include recommendations arising from the externally facilitated review scheduled for the latter part of 2021/22 as well as the implementation of lessons learned as mentioned in section 3.2 of this report.

To summarise, these areas for focus are:

- *When vacancies arise, Court should consider targeting individuals who are in younger age groups (up to age 45) and Court should monitor and address in future recruitment rounds.*
- *Court has improved the gender balance under the lay membership; however, it requires to be retained as a focus for future recruitment/appointments.*
- *Further consideration should be given to addressing ethnicity and other aspects of diversity in future recruitment of lay members and, in liaison with nominating groups, should be highlighted to constituencies and Court should reach out to relevant groups externally.*
- *The topic of performance management would be incorporated within the University's People Strategy as it is developed during session 2021/22.*
- *A new approach to briefing staff who are presenting papers to Court committees will be prepared.*

December 2021

Approved by Court February 2022