

1 STATEMENT OF CORPORATE GOVERNANCE

1.1 KEY REGULATORY FRAMEWORK

The RCS Board of Governors has specific regulatory obligations which are associated with its status as a limited company and a Scottish higher education provider with charitable status. These obligations are set out in a range of documentation. The range of documentation is visualised in diagram 2 below:

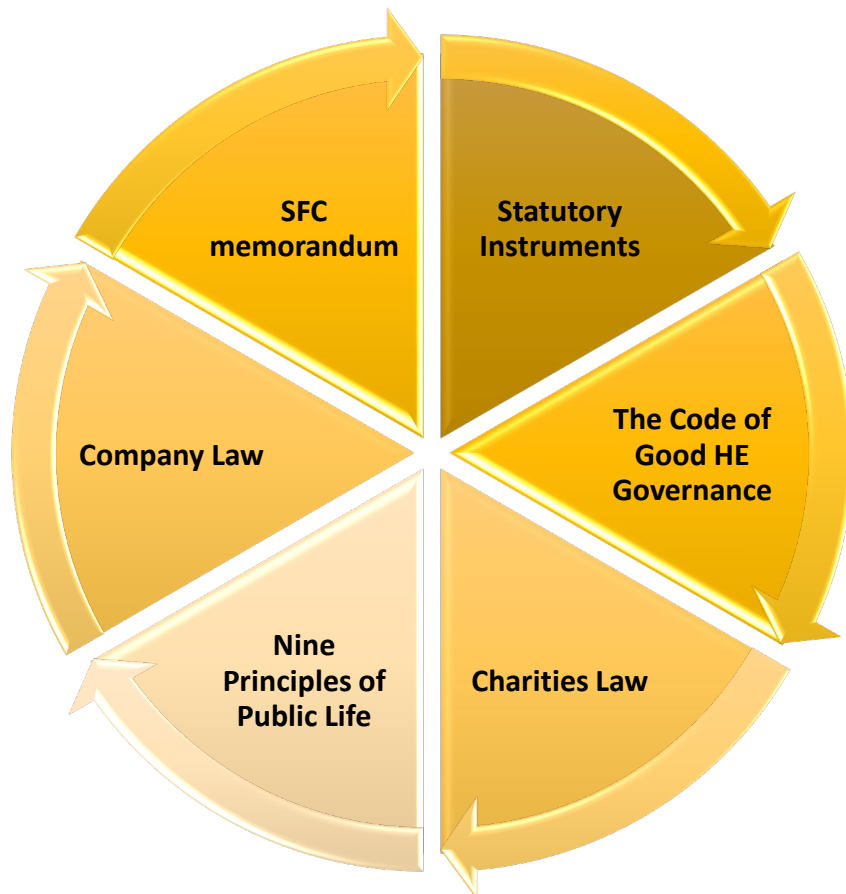


Diagram 2: Visual summary of the documentation by which the Board is governed and through which it does 'good governance'

Summaries of this documentation are provided below but new governors must familiarise themselves with the RCS statutory instruments, the *Scottish Code of Good Higher Education Governance* (2023) and with the responsibilities described in section 1.3.4 (Governors' Responsibilities).

RCS Order of Council & Articles (Statutory Instruments)

As an HEI, many aspects of the Conservatoire's governance arrangements are defined by the Privy Council through an **Order of Council** (a Scottish Statutory Instrument). This instrument's authority is derived from the Further and Higher Education (Scotland) Act 1992.

Each HEI in Scotland has its own Orders of Council. Each institution negotiates the specifics of these Orders with lawyers who mediate between the Privy Council and the Scottish Government.

Other aspects of RCS governance are set out in **Articles of Association**. These describe how the Conservatoire is to structure itself from a 'governance of business' or corporate perspective. They are drawn up by a solicitor for the Conservatoire. Our latest set of Articles were established in 2020 in the light of clauses in the Higher Education Governance (Scotland) 2016 Act. The key statutory instruments for the Conservatoire that all governors are required to know are:

1. 1994 No.1125 (S 58) The Academic Awards and Distinctions (RSAMD) (Scotland) Order of Council which sets out the degree awarding powers of the Conservatoire. These powers are limited to awarding undergraduate and postgraduate taught degree awards only. (Research degrees of the Conservatoire are instead awarded by St Andrews).
2. 2014 No. 268 Royal Conservatoire of Scotland Order of Council. This revoked the previous Order of 1995. It established the main structures and mechanisms of governance and is still referred to when updates to our corporate governance statement are made. Not all of the items in this document are relevant as a result of the changes to the Scottish Higher Education Governance Act (2016).
3. 2020 No. 3 Royal Conservatoire of Scotland Amendment Order of Council
The 2014 Order was last amended in 2020 and specifies, among other things, the composition of the Board of Governors, including the election of the Chair, in the light of the Higher Education Governance (Scotland) Act 2016.
4. 2020 Company Limited by Guarantee Articles of Association
These are the central statements of the legally defined incorporation of the RCS as a company. They make reference to and add to the Orders of Council and need to be read in conjunction with the 2014 Order of Council and its amendments. Our Articles were substantially updated in 2020 (and before that 2013, 1996 and 1995). Within this documentation the Governors of RCS are established as the Company Directors (and Members) for the purposes of company law. Key items covered in the Articles are:
 1. Business and share holding
 2. General Meetings timing and proceedings requirements (AGM) including voting
 3. Membership of the Board (updates the 2014 Order to align with the Higher Education Governance (Scotland) Act 2016 requirements)
 4. Period of Office of Governors¹
 5. Vacation (by choice or procedure) of a governor from office and filling of vacancies
 6. Powers of the Board
 7. Delegation of the Board's powers
 8. Employment of staff
 9. Governors' Interests
 10. Proceedings of the Board
 11. The Principal and the Academic Board
 12. The Secretary
 13. Company operations
 14. The Company's Objects

¹ Paragraph 74 limits the total number of years a governor can hold office as 12 years. This is contrary to the guidance in the *Scottish Code of Good Higher Education Governance 2023* which suggests that service beyond three terms of three years (ie 9 years in total) should be avoided and exceptions based on skills necessity must be notified to the SFC (Code, paragraph 21).

These statutory instruments inform both the **Corporate Governance Statement** and the **Primary Responsibilities** of the Governors. They are regulations to which the Board is bound and by which it is constituted.

The Scottish Code of Good Higher Education Governance (the Code)

Our Orders of Council and the Articles need to be read in conjunction with the **Scottish Code of Good Higher Education Governance**. Our Orders of Council and Articles set out the structures and mechanisms of governance specific to RCS. The Code provides sector-wide regulation of these structures and mechanisms. The Code details fundamental principles, accompanied by more explicit requirements, expectations, and standards to which all Scottish HEIs are expected to adhere. The Code also informs our Corporate Governance Statement and Primary Responsibilities. **Governors are required to read this Code.**

Company Law

The Conservatoire is also a Company Limited by Guarantee and is, therefore, subject to certain provisions of the Companies Act, 2006 and the filing regime operated by Companies House. The Conservatoire provides annual returns and accounts to Companies House, and maintains a register of Directors.

As a Company, the Conservatoire's constitutional and governing documents include our *Articles of Association* in which the Conservatoire is defined as:

RCS is a national and international academy and conservatoire for music, dance, film, television, and the dramatic arts, to advance learning, knowledge and excellence, by teaching, research, performance and study; it is entitled to act as a cultural centre and provide artistic stimulus for the community at large (2020, Articles, paragraph 105)

Additionally, both elected staff Governors and the President of the Students' Union are shareholders in the Company (the Royal Conservatoire being a Company Limited by Guarantee with a Shareholding). As well as being of significant symbolic and governance importance, rights of shareholders include the ability to propose resolutions at RCS's Annual General Meeting.

Charities Law

The Conservatoire also has charitable status and, therefore, has obligations under the Charities and Trustee Investment (Scotland) Act 2005, including responsibility for making annual returns to the Office of the Scottish Charity Regulator (OSCR).

Governors are Charity Trustees for the purposes of charity law and, therefore, have duties and responsibilities to act in the best interests of the Conservatoire and to ensure that its assets are safeguarded and applied to pursue its charitable purposes.

RCS's charitable purpose is defined as: "*The advancement of education. The advancement of arts, heritage, culture, or science.*"

Scottish Funding Council (SFC) Memorandum

As an higher education provider, RCS receives a significant proportion of its income in the form of grants from the SFC and is, therefore, also bound by the conditions of the SFC Financial Memorandum. The Memorandum sets out a series of obligations which RCS must comply with as conditions of receiving the Scottish Government funding provided by the SFC. The Governors have responsibility for ensuring that the Conservatoire complies with these obligations.

Key obligations the RCS has to the Scottish Funding Council

- Complying with the Code
- Using Public Funds in accordance with legislation and the financial memorandum
- Being transparent in relation to decisions made
- Striving to achieve value for money
- Strategic planning in alignment with our mission and the Outcome Agreement
- Submitting an Outcome Agreement annually
- Remaining sustainable and financially viable
- Internal auditing and risk management
- Monitoring and reporting on performance regularly and accurately
- Continuously enhancing quality of activity with students and stakeholders
- Maintaining our status as a small specialist institution (SSI) if we are to retain SSI funding

The Nolan Principles of Public Life

Although the Conservatoire is not a public body, the Code (2023) identifies that Governors must adhere to the *Nine Principles of Public Life in Scotland*. In short, these are:

1. Duty,
2. Selflessness,
3. Integrity,
4. Objectivity,
5. Accountability and stewardship,
6. Openness,
7. Honesty,
8. Leadership,
9. Respect.

1.2 STATEMENT OF PRIMARY RESPONSIBILITIES

The Board of Governors of RCS is collectively responsible for overseeing RCS's activities, determining its future direction, and fostering an environment in which RCS's mission is achieved and the potential of all of its students is achieved.

The Board of Governors ensures that RCS complies with the legislative, regulatory, and best-practice framework within which Scottish higher education operates.

Primary Responsibilities

To approve the mission, strategic vision and values of RCS, long-term academic and business plans and key performance indicators, and to ensure that these meet the interests of stakeholders.

Under the general control and direction of the Board, to delegate authority to the Principal, as Chief Executive, for the academic, corporate, financial, estate, and human resource management of RCS and to establish and keep under regular review the policies, procedures and limits within such management functions as shall be undertaken by and under the authority of the Principal.

To retain strategic responsibility for quality and provide public accountability for all aspects of institutional activities, including quality assurance and enhancement.

To delegate to the Academic Board the function of the Board relating to the overall planning, co-ordination, development, and supervision of the academic work of RCS and such other functions of the Board of Governors as may be assigned to the Academic Board by the Board of Governors. Under these arrangements, the Board of Governors must satisfy itself that there are appropriate processes in place with regard to quality assurance and enhancement of educational provision.

To ensure the establishment and monitoring of systems of control and accountability, including financial and operational controls and risk assessment, procedures for handling internal grievances, complaints from students/staff and others (including whistleblowing) and for managing conflicts of interest.

To ensure that processes are in place to monitor and evaluate the performance and effectiveness of RCS against the plans and approved key performance indicators, which should be – where possible and appropriate – benchmarked against other comparable institutions.

To establish processes to monitor and evaluate the performance and effectiveness of the Board of Governors itself, its Committees, and the Chair of the Board of Governors.

To conduct its business in an open and transparent manner and in accordance with the **Scottish Code of Good HE Governance**, bearing in mind the principles of proportionality and relevance to the nature of RCS, and with the **principles of public life** drawn up by the Committee on Standards in Public Life.

To establish and oversee processes which secure the election of the Chair of the Board of Governors.

To ensure that RCS meets its commitments to the Scottish Funding Council.

To safeguard the good name and values of RCS.

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To appoint the Principal as Chief Executive, and to put in place suitable arrangements for monitoring their performance.

To appoint a Secretary to the Board of Governors and to ensure that, if the person appointed has managerial responsibilities in the institution, there is an appropriate separation in the lines of accountability.

To be the employing authority for all staff in RCS and to be responsible for establishing a human resources strategy together with all relevant human resources policies.

To be the principal financial and business authority of RCS, to ensure that proper books of account are kept, to approve the annual budget and financial statements, and to have overall responsibility for RCS's assets, property and estate.

To ensure that public funds are appropriately applied and are properly accounted for and that RCS delivers value for money.

To be RCS's legal authority and, as such, to ensure that systems are in place for meeting all of its legal obligations, including those arising from contracts and other legal commitments made in RCS's name.

To make such provision as it thinks fit for the general welfare of students, in consultation with the Academic Board.

To act as custodian for any legacy, endowment, bequest or gift made directly to RCS.

To ensure that RCS's constitution is followed at all times and that its business is conducted in accordance with its various statutory obligations and that appropriate advice is available to enable this to happen.

To constructively challenge and support the management of RCS.

Reserved Powers

As established under the 2014 Order of Council, the Board of Governors may delegate any of its powers to any committee of one or more Governors within the constraints of the law, our regulatory framework as outlined in section 1 and any additional requirements of the SFC.

The following list identifies those items of business which require exclusive attention from the Board of Governors as identified in the law and through the Code. These are referred to as reserved powers. As such the following may only be exercised by the Board of Governors:

- The dismissal of the Chair of the Board of Governors;
- The appointment and dismissal of the Principal;
- The appointment and dismissal of all Lay Governors and the dismissal of elected Governors;
- The appointment and dismissal of the Secretary
- Major statements complying with statutory or other legal requirements including those relating to the governing instruments of the Conservatoire and its charitable status eg The approval of changes to RCS's Articles of Association, Orders of Council, and the Corporate Governance Statement and associated Statement of Primary Responsibilities of the Board of Governors.
- The approval of the constitution and funding of the Students' Union;

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- The approval of:
 - The purpose, values, overall strategy, and strategic objectives of the Conservatoire
 - The Conservatoire's Strategic Plans (academic and business) and associated annual plans
 - The Annual Report & Financial Statements
 - Annual Budget
 - The Capital Budget
 - The Financial Forecasts
 - The Outcome Agreement with the Scottish Funding Council
 - Loans
- Conservatoire-wide strategies, appropriate policies, and formal reports including those relating to:
 - Risk assessment/management
 - Treasury Management
 - Investment Management
 - Business Continuity
 - Reserves
 - Gifts and Hospitality Policy
 - Academic sustainability
 - Financial sustainability
 - Human Resources
 - Health and safety
 - Equality of opportunity
 - Dignity at Work
 - Policies associated with Safeguarding and Anti-Terrorism (Prevent),
 - Estates and digital infrastructure strategies
 - Other Legislative Compliance
- The approval and monitoring of the committee structure (creation and monitoring of subsidiary bodies) of the Board of Governors following the recommendations of the Nominations Committee;
- The Remuneration Policy for those senior staff members whose salaries are not included within national pay scales following the recommendations of Remuneration Committee;
- The approval and monitoring of the key performance indicators of the Conservatoire.
- The establishment and monitoring of systems of control and accountability.
- The monitoring and evaluation of the effectiveness of the Board of Governors itself.
- The appointment of, and receipt of reports from, the Academic Board.
- The formation of, and receipt of regular reports from, Committees to consider major areas of activities.
- Any matter which might have a significant bearing on the reputation of the Conservatoire.
- Any other matters which may be identified by the Scottish Funding Council as requiring the approval of the full Board.

1.3 STRUCTURE, ROLES, AND RESPONSIBILITIES (2023-24)

1.3.1 Size of the Board

Within terms of Article 3 of the *RCS Amendment Order of Council 2020*, the Conservatoire's Board must operate with between 21 and 29 governors.

A majority of the Governors must be independent members, i.e. members who are not students of or employed by the Conservatoire. RCS's *Order of Council* specifies that the number of **Lay Governors** should be not less than 11 and not more than 19.

Additionally, and in compliance with the Higher Education Governance (Scotland) Act 2016, the following categories of governors are included in the Board's membership:

- The Principal
- The Deputy Principal
- Student Union President and Vice President
- A representative nominated by Academic Board
- Two elected staff governors (one each for academic staff and professional services)
- Two Trades Union nominated governors (one each for academic staff and professional services)

1.3.2 Composition of the Board of Governors

Multiple factors influence both the size and composition of the RCS Board of Governors. The primary ones are:

1. Ensuring that the skills and experience profile of its total membership is sufficient to meet the Board of Governors' commitments in terms of its Statement of Primary Responsibilities, the *Scottish Code of Good Higher Education Governance* (revised version, 2023), and to operate its various Committees.
2. Being able to adapt the Board's skills matrix to accommodate the changing context in which performance arts education is developing.
3. Emphasizing, through the Board membership, its position as Scotland's national Conservatoire with an international profile and ambitions.
4. Aligning its singular focus on performing arts education with a Board membership drawing on the expertise and wisdom of individuals with either direct experience of performance or with leadership/senior management experience in the performing arts.
5. Emphasizing leadership in equality, diversity and inclusion and fulfilling the aspirations and requirements of the Gender Representation on Public Boards (Scotland) Act 2018.

1.3.3 Specific roles within the Board:

Chair

This role is appointed by the Board of Governors. Following a comprehensive recruitment and election process in 2021, in full compliance with sections 3 to 8 of the Higher Education Governance (Scotland) Act 2016, the new Chair took up their role in December 2022.

They preside at meetings of the Board at which they also have the casting vote, convene Nominations Committee, and have responsibility for both the leadership and effectiveness of the Board of Governors as well as for ensuring that there is an

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appropriate balance of authority between the Board of Governors and the Principal of the School. In the event of their absence, the Board has appointed a Vice Chair.

The Chair ensures that the Conservatoire is well connected with its stakeholders, including staff and students. The Chair is responsible for ensuring that the Board's agenda includes all of the issues that it needs to discuss in order to meet all of its responsibilities.

As Chair of Board meetings, they should promote the Board's wellbeing and efficient operation, ensuring that all Governors work together effectively and have confidence in the procedures laid down for the conduct of business.

The Chair must have a constructive and challenging working relationship with the Principal and will, on behalf of the Board, conduct an annual appraisal of the Principal's performance.

Vice-Chair

A Vice-Chair deputises for the Chair (possibly at short notice), both in terms of the routine business and in times of crisis. A Vice Chair also represents the Conservatoire to a range of stakeholders in their own capacity as Vice Chair and, in support of the Chair, provides leadership to the Board in specific and agreed areas.

Principal

The Director is the Chief Accountable Officer of the Conservatoire and is responsible for providing the Governors with advice on the strategic direction of the School and its management. Under the general control and direction of the Board, the Principal is specifically responsible for:

- executive management;
- day-to-day direction of the Conservatoire;
- implementing the decisions of the Board;
- ensuring that appropriate consultation takes place with the Academic Board concerning the Conservatoire's future development and reporting to the Board accordingly; and
- fulfilling the role of designated officer.

To enable the Principal to fulfil their duties, the Conservatoire has an executive group, the **Central Strategic Management Group** (CSMT). This group includes:

- Deputy Principal
- Director of Finance and Estates
- Director of Human Resources
- Director of External Relations
- Director of the School of Music
- Director of Drama, Dance, Production and Film
- Director of Research and Knowledge Exchange
- Director of Business Development
- Academic Registrar and Secretary

Senior Independent Governor

The SIG is an 'intermediary' governor as defined in the Code, available to any Governor, whether individually or collectively, should they wish to raise concerns that they have not been able to resolve through normal channels, for example, via the *Chair* of the Board, the *Principal*, the convenor of Audit & Risk Committee or the Academic Registrar & Secretary.

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These concerns might include, but are not necessarily limited to, concerns about Board and/or committee governance arrangements which it has not been possible to resolve through normal channels.

Lay Governors

A majority of the Governors must be lay (independent) members not employed by or engaged with the Conservatoire in another way. When a lay governor resigns or demits office at the end of their term, Nominations Committee is responsible for overseeing the recruitment and appointment of new independent governors.

To ensure that the Board can fulfil its primary duties, Nominations Committee uses a skills matrix, which clarifies the balance of skills, attributes and experience required across the Board's membership. Nominations Committee also ensures that where changes occur in the Board's composition, due and proper account is taken of aiming for a balance across all protected characteristics recognized under the Equality Act (Scotland) 2010 and in respect to the requirements of the Gender Representation on Public Boards (Scotland) Act 2018.

On the appointment of new lay governors, the Board is updated by the Academic Registrar and Secretary of the renewed gender composition of its members.

Elected staff member governors

Two Staff Governors are appointed by election by the staff of the Conservatoire from among their own number, one of whom is elected by the academic staff and the other by the support staff of the Conservatoire. A third staff governor is elected by the Academic Board to act as a representative governor.

Elected Governors (including the Academic Board representative governor) have precisely the same rights and responsibilities as all other Governors. *Elected Governors should not act as if delegated by the group they represent.*

Trade Union Representation

In 2023, two Trade Union Governors have been appointed in accordance with rules set out in the *2023 Scottish Code of Good Higher Education Governance* as follows:

- One has been nominated by a trade union from among the academic staff of the Conservatoire who are members of EIS; and
- One has been nominated by a trade union from among the support staff of the Conservatoire who are members of Unison.

Trade Union Governors have precisely the same rights and responsibilities as all other Governors. *Trade Union Governors should not act as if delegated by the group they represent.*

Student Representation

Two Student Governors are appointed by nomination by the Students' Union of the Conservatoire. This is following a renewal to the Student Union Constitution in 2023 which saw the introduction of a second sabbatical officer (Student Union Vice President).

Student Union Governors have precisely the same rights and responsibilities as all other Governors. *Student Union Governors should not act as if delegated by the group they represent.*

Student governors share in the collective responsibility of the Board on an equal

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footing with all other governors, and participate in all the Board's discussions, except where these relate to a member or prospective member of staff or the conduct of an individual student.

The role of Secretary (in attendance but not a governor)

The Secretary to the Board is responsible for ensuring compliance with all procedures and ensuring that papers are supplied to Governors in a timely manner containing such information, and in such form and of such quality, as is appropriate to enable the Board to discharge its duties. All Governors have access to the advice and services of the Secretary, and the appointment and removal of the Secretary shall be a decision of the Board as a whole.

As well as acting as secretary to the Board meetings, the Nominations Committee, the Convenors' Group, and the Academic Board, the Secretary to the Board is in attendance at the Remunerations Committee (in accordance with the *Code of Good HE Governance 2023*) and Finance & General Purposes Committee.

The Secretary reports every two years to the Scottish Government on the progress the Governors are making towards the 50/50 gender division of lay governors on the Board required under Scots Law.

As specified in the Code, the Secretary to the Board is also responsible for alerting the Board if they consider that any proposed action would exceed the powers of the Board of Governors or be contrary to legislation, the Code, or to the SFC's Financial Memorandum (notwithstanding the Principal's responsibility as accountable officer in the latter case.)

From 2021 onwards, the Conservatoire's Secretary also acts as the Academic Registrar for the institution.

Office	Form of appointment
Chair	Appointed by election (following procedure set out in the <u>Higher Education Governance (Scotland) 2016 Act / 2020 Order of Council Amendment</u>)
Vice Chair	Nominated by the Board (In the absence of a pre-existing Vice Chair and an expected absence of the Chair, the Chair can nominate a temporary Vice Chair) <i>2014 Order of Council</i>
Senior Independent Governor	Appointed by the Board (following recommendation from Nominations Committee)
Lay Governors	Appointed (following recruitment by Nominations Committee) <i>The Code 2023</i>
Principal (<i>ex officio</i>)	Appointed by the Board (following a recruitment process) <i>2014 Order of Council</i>
Deputy Principal (<i>ex officio</i>)	Nominated by the Principal <i>2020 Articles of Association</i>
Staff representation	Elected <u>Higher Education Governance (Scotland) 2016 Act / 2020 Articles of Association</u>
Academic Board representative (<i>ex officio</i>)	Nominated by Academic Board
Trades Union Representation	Nominated by the relevant Trades Union (and <i>de facto</i> appointed to the Board) <u>Higher Education Governance (Scotland) 2016 Act / 2020 Articles of Association</u>
Student Representation (<i>ex officio</i>)	Nominated by Student Union (elected by students to the roles and <i>de facto</i> appointed to the Board)

Table 1: RCS Board – who's elected, who's nominated, who's appointed

1.3.4 Governors' Responsibilities

The Board of Governors is responsible for RCS's system of internal control and for reviewing its effectiveness. Such a system is designed to manage rather than eliminate the risk of failure to achieve its business objectives and can only provide reasonable and not absolute assurance against material misstatement or loss.

1. Making an active contribution

All Governors are expected to make an active contribution in order to ensure that the Board fulfils its primary responsibilities. Consequently, there are multiple themes related to primary responsibilities within which an individual can make an impact as a governor. A summary of these responsibilities is provided in Table 2.

Theme	Specifics
Closing a skills matrix gap	Providing individual strengths in particular areas of the Board's skills matrix
Strategic Corporate governance	<ol style="list-style-type: none"> 1. Ensuring effective financial accountability and management of the Conservatoire 2. Playing a key role in the formulation, approval and review of the Conservatoire's mission and strategic vision 3. Overseeing and monitoring the development and implementation of the Conservatoire's strategic plan 4. Safeguarding the reputation and values of the Conservatoire 5. Being satisfied that a course of action proposed is in accordance with the Conservatoire's statutes or instruments and articles of governance; 6. Undertaking the election of a Chair and the appointment of up to two Vice Chairs and Lay Governors as required within the limits set out in the RCS Articles of Association 7. Appointing the Principal and the Secretary to the Board 8. Working on and engaging with regular reports from sub-committees of the Board of Governors 9. Working to support the strategic responsibilities of the Board without engaging in the operational matters of the Conservatoire 10. Avoiding conflicts of interest
Compliance and regulation	<ol style="list-style-type: none"> 11. Ensuring that systems and policies are in place for the Conservatoire to fulfil its legal and regulatory obligations 12. Ensuring that appropriate processes are in place to secure academic quality and standards at the same time as upholding academic freedom.
Additional good governance of commercial and charitable operations	<ol style="list-style-type: none"> 13. Promoting the success of the Conservatoire (as a company) as a charity with due regard to the long-term consequences of decisions, the interest of our employees and the impact on our community and the environment, reputation management, and acting in good faith

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	14. Monitoring systems of control relating to campus facilities, estates, and, where relevant, student accommodation (ie BASE)
Oversight of strategic risk management & risk framework	15. Ensuring a robust risk management framework is in place and used effectively
Student and staff experience strategic oversight	16. Ensuring that systems and policies are in place to provide the best staff and student experience possible within the resource limitations of being a small specialist higher education institution (referred to as being an SSI) 17. Enabling the effective functioning of the Students Union
Monitoring performance	18. Ensuring that processes are in place to monitor and evaluate the performance and effectiveness of the Conservatoire. 19. Establishing processes to monitor and evaluate the performance and effectiveness of the Board of Governors. 20. Determining and reviewing the remuneration of those senior staff members whose salaries are not included within national pay scales.
Collective responsibility	21. Ensuring regular attendance 22. Engaging with relevant documentation 23. Ensuring the minutes reflect an accurate record of proceedings as appropriate 24. Actively participating in the decision-making of the Board of Governors
Embodying the Nine Principles of Public Life	25. Exercising independent judgement, act honestly, diligently and in good faith; 26. Adhering to the Nine Principles of Public Life and thereby safeguarding and promoting the Conservatoire's reputation and autonomy.

Table 2: summary of governors' responsibilities

Governors have a mandatory role as members of the governing body of the Conservatoire to demonstrate high standards of corporate governance and to establish the principles for governance throughout the institution.

Further details

As well as having a **responsibility to attend** and **actively participate** in the Board's activities, governors have a broad range of responsibilities. These divide into those related to the Code; those related to the RCS being a company; those related to RCS being a charity; and those relating to RCS being an entity bound by the broader laws of Scotland and the UK.

No Governor may be bound, when speaking or voting, by mandates given to them by others, except when acting under approved arrangements as a proxy for another member of the Board. This fulfils good governance requirements as set out in the Code (2023) and complies with the regulations established for charity trustees.

Governors are not there to represent a constituent group, rather they make their contribution from their point of view as a member of a constituent group.

2. Being a governor of an higher education institution: *Responsibilities under The Code*

All governors must have regard to the terms of the Scottish Code of Good HE Governance, the need to comply with the rules relating to the use of public funds as laid down in the Financial Memorandum (with the SFC), all other statutory obligations and act in good faith and in the best interests of the Conservatoire.

The Code 2023 also establishes the principles RCS must adhere to with respect to:

a. *Committee membership*

All governors at RCS are primarily of equal stature and responsibility as each other, whether they are lay governors or staff / student elected/ appointed ones.

Only the RCS Audit and Risk Committee can preclude membership on the grounds of the category of governing Board member. In the case of Audit & Risk this means that only lay governors can be members, all other category of governor must be absent.

For all other committees of the Board, however, a member cannot be excluded purely because of the type of governing membership they hold (eg elected or nominated staff / student members);

b. *Code Committee attendance regulations and interface with our Articles/ Orders:*

Categories of governor can be excluded temporarily from Board and committee meetings when the discussion and decision-making relates to the conditions of employment of any member of the RCS (2014 *Order of Council*). At this point in a given meeting, those members who are also employees of RCS and student representative governors are required to leave the room for the duration of the relevant agenda item.

In the case of Remunerations Committee, the Code suggests that student input is received from a student governor regarding the pay settlement of the senior management team (*The Code 2023*).

c. *Undue influence by Executive members*

Whilst key executive officers of the RCS should attend meetings to enable effective decision-making, they must not unduly influence the business of the Board or its sub-committees. This is to minimise conflicts of interest but also to mitigate the likelihood of operational matters becoming the discussion point of a Board committee.

d. *Equalities Duties*

Fulfilment of the role of a 'public body' with respect to the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and its associated public sector equality duty:

<https://www.legislation.gov.uk/ssi/2012/162/contents/made>

3. Being a Company Director of RCS: *Responsibilities Under Company Law*

The Conservatoire is a company limited by guarantee. For company law purposes, the Governors are directors, and must comply with the duties required of directors by the Companies Act, 2006

The duties of directors to the company they are appointed by are regulated primarily by the Companies Act. These general duties apply to all directors and those acting as directors, even if not validly appointed as such. The Act makes no distinction between executive (i.e. directors employed full or part-time in working in an executive role within the company) and non-executive directors (i.e. a director who is not employed in the company).

Generally, if directors act within their powers, with such care as is reasonable to expect from them having regard to their knowledge and experience, and if they act honestly for the benefit of the company they represent, then they will have discharged their duties to the company and cannot be held personally liable for loss or damage suffered by the company or third parties.²

The directors of a company must:

- Act in the way they consider, in good faith, would be most likely to **promote the success of the company** for the benefit of its members as a whole, recognizing that this intersects with the Conservatoire's role as an education provider, a charity, and an employer.
- **Act in accordance with the company's constitution** (including, but not limited to its Articles of Association). In the Conservatoire's case, this includes its Orders of Council.
- Only exercise powers for the purposes for which they are conferred. Directors must **ensure they are aware of and act consistently with their company's Articles, realising that there are some constraints to the powers**. In addition to the Articles, directors must act in accordance with any decisions which are taken in accordance with the articles, for example decisions or resolutions made at general meetings, or any agreements made which affect the company's constitution.
- Ensure:
 - Suitable accounting policies are selected and applied consistently;
 - Judgments and estimates are made that are reasonable and prudent;
 - Applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements;
 - Financial statements are prepared on a going concern basis unless it is inappropriate to presume that RCS will continue in operation.
 - Funds from the Scottish Funding Council are used only for the purposes for which they have been given and in accordance with the Financial Memorandum with the Council and any other conditions which they may from time to time prescribe;
 - Appropriate financial and management controls are in place to safeguard

² In very limited and, within higher education, unlikely circumstances, personal liability may arise in the event that a director fails to properly discharge their duties.

- public funds and funds from other sources;
- The assets of RCS are safeguarded and hence to take reasonable steps to prevent and detect fraud and other irregularities;
- The economical, efficient and effective management of RCS's resources and expenditure are secured;
- Sound corporate governance and the proper conduct of RCS's operations.

4. Being a Charity Trustee: *Responsibilities under Charities Law*

The Charities and Trustee Investment (Scotland) Act 2005 imposes certain duties on charity trustees. These apply to Governors, on the basis that charities law in Scotland defines charity trustees as the group of individuals with general control and management of the administration of a charity, however they are identified. These duties will also potentially apply to certain of the senior executive management team of the Conservatoire, given their level of influence and control over its day-to-day running.

As charity trustees, the Governors have collective responsibility for the actions and operation of RCS as a charity. This accountability cannot be delegated or passed on to any other party. There is a positive obligation under the Charities and Trustee Investment (Scotland) Act 2005 on all trustees to take all steps reasonably necessary to correct any breach of duty identified. As such, the conduct of one trustee is also the concern of the others.

Failure by charity trustees to comply with their duties under the Charities and Trustee Investment (Scotland) Act 2005 can constitute misconduct in the running of the charity.

In the context of a charitable company limited by guarantee, the duties are still owed to the company, but in exercising their duties the directors require to consider the company's provision of public benefit in pursuit of its charitable purposes rather than provision of commercial benefit to its members.

Conflicts of Interest

Members of the Conservatoire's Board of Governors need to act, and be perceived to act, impartially, and not be influenced by social or business relationships.

Revised information is requested annually to update the Register of Business Interests of Governors. Items in the Register of Business Interests, in addition to Directorships, include the Governor's principal occupation and any personal or business interests which they consider may conflict with their responsibilities as a Governor of Conservatoire. It may not be possible to judge in advance where a conflict may arise and when this happens a Governor should declare an interest or conflict and offer to leave the meeting or whatever action is judged appropriate at that time.

5. Being in 'public life': *embodying the Nine Principles of Public Life*

Duty

Governors have a duty to uphold the law and act in accordance with the law and the public trust placed in them. They have a duty to act in the interests of the public body of which they are a member and in accordance with the core functions and duties of that

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body.

Selflessness

Governors should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their families or their friends.

Integrity

Governors should not place themselves under any financial or other obligation to any individuals or organisations that might reasonably be thought to influence them in the performance of their duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, Governors should make choices solely on merit.

Accountability and Stewardship

Governors are accountable for their decisions and actions to the public. They have a duty to consider issues on their merits, taking account of the views of others and must ensure that the Conservatoire uses its resources prudently and in accordance with the law.

Openness

Governors should be as open as possible about all their decisions and the actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Governors have a duty to act honestly and to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Governors should promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of the Conservatoire in conducting public business.

Respect

Governors must respect fellow members of the Board and employees of the Conservatoire and the role they play, treating them with courtesy at all times. Similarly, they must respect members of the public when performing duties as a member of the board.

6. Additional responsibilities

- The Health and Safety at Work etc. Act 1974 and associated regulations. This Act and the regulations made under it (of which there are a vast number, relating to a range of different industries, hazards or circumstances) sets out the basic health and safety duties of a company, its directors and employees. The particular obligations and duties which will apply will depend on the circumstances. However, directors can be held criminally liable where the company is found guilty of a health and safety offence, and it can be demonstrated that the offence was committed with the consent

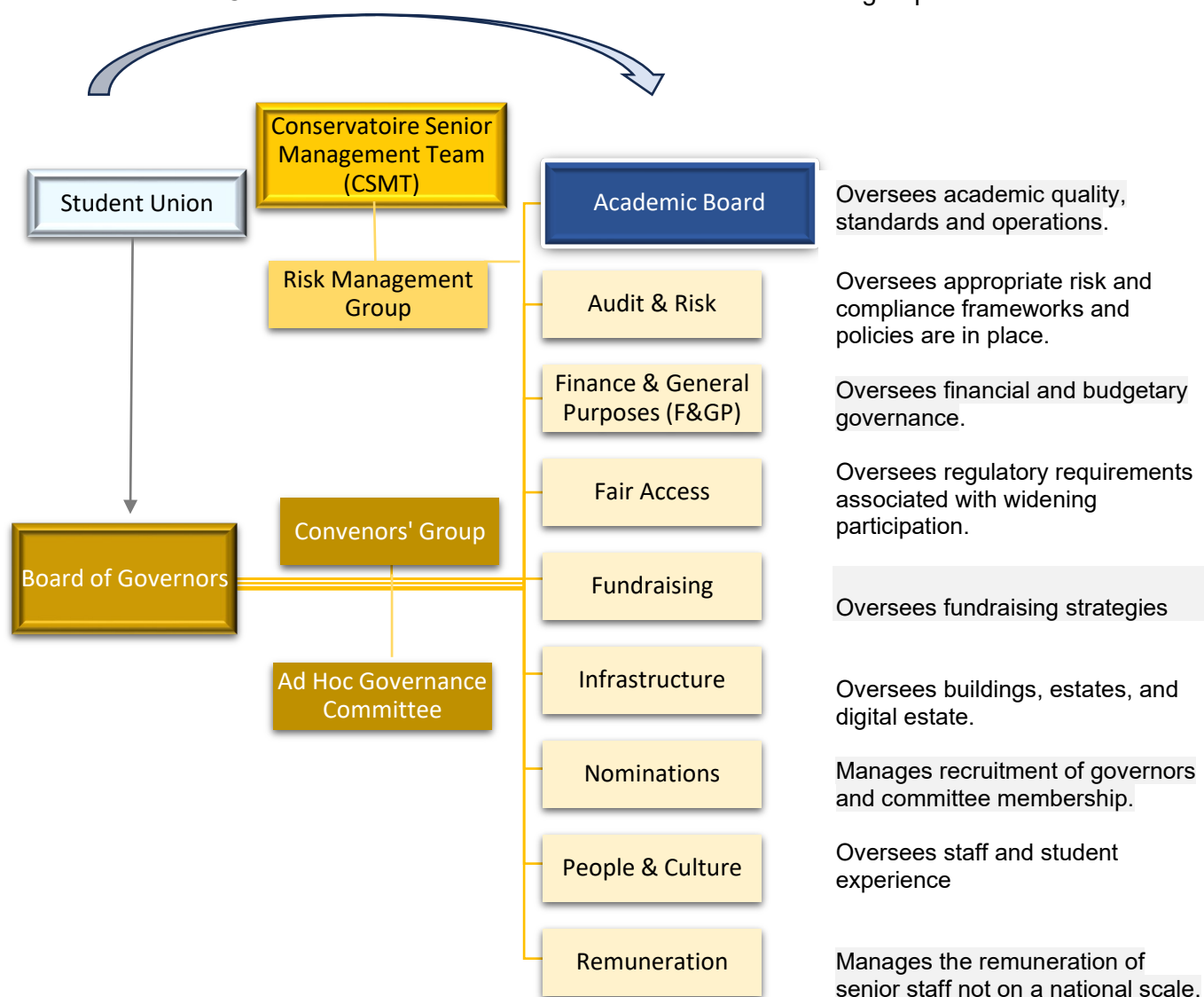
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or connivance of a director, or the offence is attributable to neglect on the part of a director.

- Directors can similarly be held personally responsible for certain offences under a variety of different pieces of environmental legislation if it can be shown that the director contributed to a breach through consent, connivance, or neglect.
- Under the Company Directors Disqualification Act 1986, individuals may be barred from acting as directors of limited companies where they have been found to have been involved in circumstances involving fraudulent or dishonest business activity. To act as a company director whilst disqualified is a criminal offence.
- The financial sustainability of the higher education sector in Scotland is regulated by the Scottish Funding Council, with institutions being required to address their financial security within the regulatory requirements of the financial memorandum. To date, 'trading as insolvent' has not been seen in Scotland amongst higher education providers. Arguably, nonetheless, Governors could potentially have duties under the Insolvency Act 1986 which arise when a company is in financial difficulty. For example, directors can become personally liable for their actions where a director continues to allow a company to trade when the director knew or ought to have known that there was no reasonable prospect of the company avoiding insolvent liquidation (referred to as, "wrongful trading"), or if the director knowingly continues to carry on business with the intention of defrauding creditors in the knowledge that there was no reasonable prospect of the creditors being paid by the company. Action can be taken in certain circumstances by a liquidator or administrator of the company following formal insolvency proceedings, or by the Insolvency Service and prosecuting authorities in certain circumstances (e.g. fraud). At present, this is not seen as a major issue within Scottish Higher Education governance, but is presented here to cover the legal context.

1.3.5 Board and committees summarized

Whilst each governor has equal responsibilities as related to their category of membership, the Board of Governors also operates a committee structure to detailed scrutiny of particular aspects of the Board’s remit is delegated to a smaller group of Governors. The visualization below outlines the Conservatoire’s Board sub-committees and associated groups:



Dark blue	- Academic Governance (Academic Board holds delegated authority from the Board of Governors) - Convened by the Principal
Light blue	- Student Union - Led by the annually elected Student Union President
Light yellow	- Board of Governors’ Committees
Gold	- Central Senior Management Team - Convened by the Principal
Ochre	- Governance of the Board of Governors’ (oversight groups and committees)

Governors may be asked to serve on a committee in an area in which they have particular experience, expertise or interest.

Appointment to committees is the responsibility of the Nominations Committee.

1.3.6 The Work and Membership of The Board's Committees

The Board of Governors has several committees some of which are statutorily required by external regulation (numbers 1-4 below) and some of which have been explicitly constituted by the Conservatoire to enhance governance and emphasize the Conservatoire's values and needs (numbers 5-9 below). All of these committees are formally constituted with their own terms of reference. The committees are divided below into two sections: Corporate governance committees and academic governance committees.

A. CORPORATE GOVERNANCE COMMITTEES

1. **Finance & General Purposes Committee** recommends to the Board of Governors the RCS's annual revenue and capital budgets and monitors performance in relation to these approved budgets. The Committee examines all matters which have major financial implications for the RCS. It is, therefore, involved in the examination of all aspects of the RCS's planning and budgetary processes. The scope of the Committee's remit may, from time to time, include the examination of issues which extend beyond financial, but which are nevertheless of strategic importance. Its membership is composed of 9 governors in total, including the Chair (*ex officio*), 5 lay governors, the Principal (*ex officio*), and the Student President (*ex officio*), plus the convenor of Audit & Risk Committee in attendance.
2. **Audit & Risk Committee** advises and assists on the assurance and control environment of the Conservatoire in respect of proper financial management; safeguarding the RCS's assets; the economy, efficiency and effectiveness of the RCS's activities; corporate governance and the conduct of the RCS's operations; risk management and counter-fraud and whistleblowing. It meets at least three times per year and at least once per year it meets with the Conservatoire's external and internal auditors. Its membership is composed of 4 lay members, plus the convenor of Finance and General Purposes in attendance.
 - The **Risk Management Group** reports to the Audit and Risk Committee. Risk Management Group has responsibility for the Strategic Risk Register. It is responsible to the Audit and Risk Committee for identification of risk and ensuring that all identified risks are assessed adequately, addressed in policies, and regularly reviewed and updated in a systematic process.
3. The **Nominations Committee** makes recommendations to the Board of Governors on matters relating to its structure, effective governance and membership. It is composed of the Chair (*ex officio*), the Principal (*ex officio*), the Student President (*ex officio*), the Senior Independent Governor (*ex officio*), two lay governors, and one elected staff governor (normally the Academic Board representative).
4. The **Remuneration Committee** ensures that the salaries and terms and conditions of members of the RCS senior management, including any severance arrangements, are decided in accordance with agreed policies and processes and take account of all relevant external requirements, including those of: the Scottish Funding Council; the Scottish Code of Good Higher Education Governance; and the Committee of Scottish Chairs' Guidance Note on the Operation of Remuneration Committees in Scottish Higher Education. The Committee ensures that all salaries and conditions are determined by the use of performance management systems, such as the Professional Update process, and a transparent reward framework, using appropriate salary benchmarking for the RCS/Public Sector as appropriate and the RCS pay award. The committee has two lay governors, the Convenor of F&GP (*ex officio*), the Chair (*ex officio*) and is attended by the Director of HR

and the Principal (*ex officio*) (except during discussions regarding the Principal's remuneration) and the Academic Registrar and Secretary as required by the revised (2023) *Scottish Code of Good Higher Education Governance*.

5. The **People and Culture Committee** is responsible for the review of people strategies across RCS. This includes both a specific focus on the employee life-cycle and also the strategies and policies relating to the student life-cycle. The Committee will monitor and report on strategic progress and will review related KPIs and data, which will inform future development. The Committee will make recommendations to the audit cycle as and when appropriate. The Committee shall provide a People and Culture report to the Board of Governors which will include Health Safety and Wellbeing, and Equality, Diversity and Inclusion activities. The Committee ensures that the Conservatoire approaches are directed by and consistent with the RCS Strategic Plan. Its current membership is five lay governors, the Deputy Principal (*ex officio*), the Student President (*ex officio*), and one elected staff governor (*ex officio*).
6. The **Fair Access Committee** is responsible for ensuring that the RCS is resourced effectively to meet its strategic national and institutional fair access and transitions outcomes and targets, as set out in the Scottish Funding Council's (SFC) Outcome and Impact Framework and has effective policies in place to meet relevant widening participation, equalities and other inclusion based legislative obligations. The Committee ensures that the Fair Access strategic priorities and projects are designed to realise relevant objectives in the RCS' Strategic Plan. Its membership includes 3 lay governors plus the Student President (*ex officio*).
7. The **Fundraising Committee** ensures the approval and oversight of a fundraising strategy that aligns with and enables the achievement of the RCS strategic plan. It also actively supports and challenges the RCS executive in the development of and securing of additional and recurring revenue sources and/or streams to support scholarship, project, campaign, and unrestricted income activity with a target of £1m-plus per annum as well as approving and overseeing the strategy for alumni engagement and future giving. Its current membership comprises of six lay governors, the Chair (*ex officio*), the Principal (*ex officio*) and the Student President (*ex officio*).
8. The **Infrastructure Committee** oversees the operation and, where appropriate, development of the RCS Estate Strategy to ensure that it supports the achievement of the RCS strategic plan. The Committee has delegated responsibility for the control of major capital works in accordance with the terms of the guidelines and directions issued by the Scottish Funding Council and Government, always observing the principles and procedures set down in the *Procedure Notes for Capital Projects and Equipment*. It receives, considers, and ultimately recommends the Estate Strategy to the Board of Governors. Its current membership is three lay governors, the Chair (*ex officio*), the Principal (*ex officio*), the Chair of F&GP (*ex officio*), and Student President (*ex officio*).
9. Additional groups to ensure the effective operation of the Board of Governors are:
 - a. **Ad Hoc Corporate Governance Reference Group** is established by the Board of Governors to meet on an ad hoc basis in order to receive sensitive information, for example about complaints or sensitive issues that could impact the governance and/or reputation of the Royal Conservatoire of Scotland (RCS), which might raise general or specific issues of concern or suggest a significant lapse in good

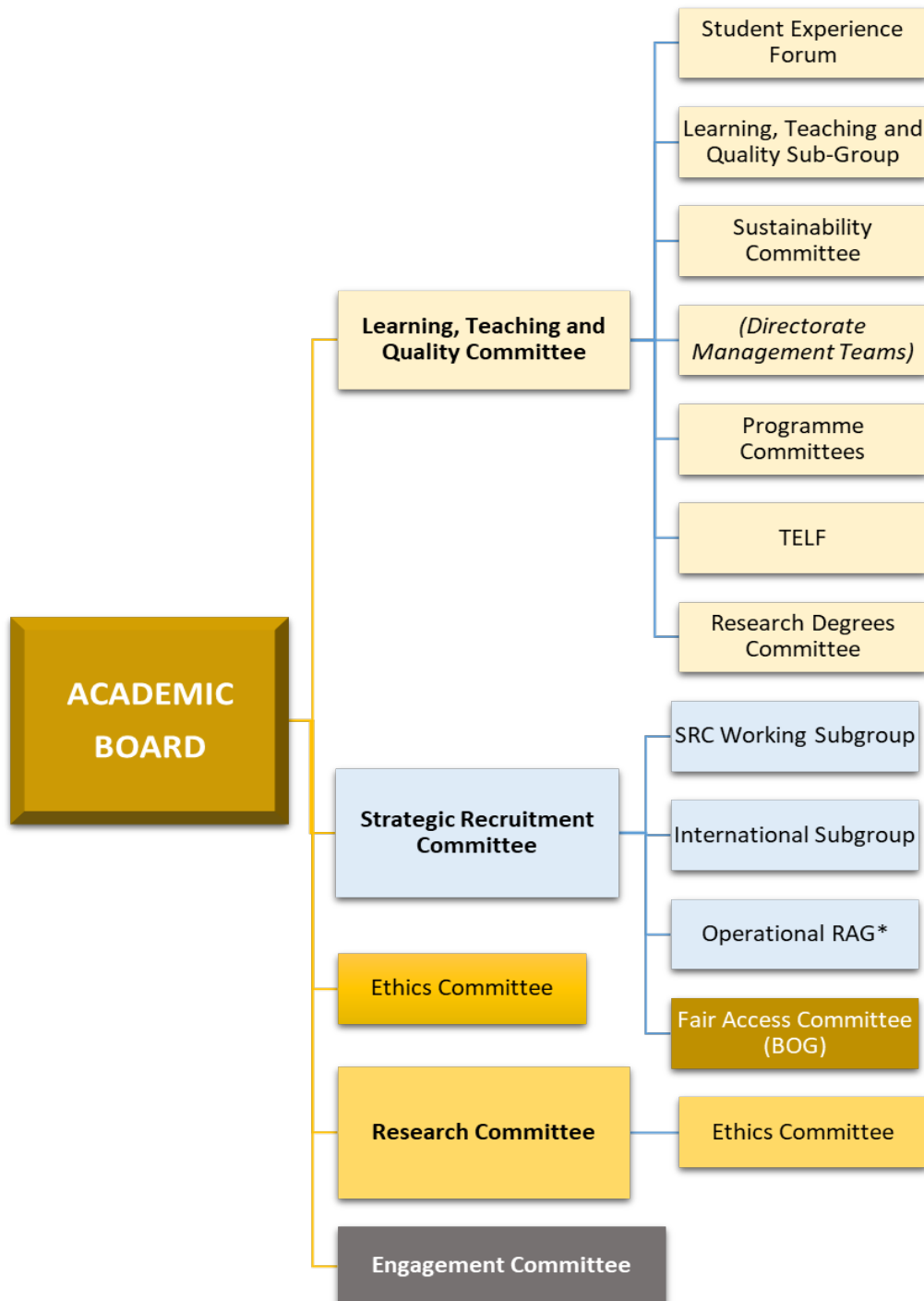
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governance. It provides a mechanism for determining whether and in what way these matters should be considered and eventually brought formally to the attention of the Board.

- b. **Convenors' Group** is for all the convenors of RCS' Board of Governors' related committees and is convened by the Chair. It meets regularly to discuss issues affecting Board committees, communicate regarding governance and committee business between committee meetings as necessary, and oversee the current annual evaluation of Board committee effectiveness.

B. ACADEMIC GOVERNANCE COMMITTEES

Via delegated authority from the Board, **Academic Board** effectively oversees the governance of all academic matters. For Academic Board to undertake its business, it also has its own structure of committees (visualized below) from which business moves up to Academic Board and then, in reserved powers' situations, up to the Board of Governors.



The Academic Board is responsible to the Board of Governors for the overall planning, co-ordination, development and supervision of the academic work and for Quality Assurance and

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Quality Enhancement within RCS. Its basic function and constitution are established in the 2014 *Order of Council*. The membership comprises the Principal, the Deputy Principal, the Senior Academic Managers, the Head of Information Services, a member co-opted from another academic institution, up to three elected student members, five elected academic staff members and a lay governor in attendance.

The most common materials from Academic Board with which the Board actively engages with are:

- material related to the SFC Outcome Agreement
- material related to the Strategic Plan and associated annual plans
- memoranda of understanding (establishing partnerships) and agreement (contracts) that form partnerships with other entities
- sign off approval for student facing policies
- sign off for the Code of Appeals