

Presidential Commission into ICE Governance

Interim Report for Consultation

Volume 1 – Full Report

August 2019



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1. Introduction

- 1.1 The Institution of Civil Engineers (ICE) has a noble purpose: to foster and promote the art and science of Civil Engineering. Or, in the words of our President, 'to improve lives in our global society'.
- 1.2 To fulfil that purpose and to serve society, the Institution needs to be a well-led and effective organisation. But it also relies on the engagement, enthusiasm and professionalism of its members, which is why it is known as a global membership organisation. The golden thread linking organisation, leadership and membership is good governance.
- 1.3 In 2018, a ballot of ICE members endorsed new governance arrangements. In parallel, a Special General Meeting passed resolutions which expressed disappointment with ICE's handling of the ballot and called on the ICE Council to formulate new proposals for ICE governance following extensive and effective consultation of the membership.
- 1.4 The Council, in implementing the new arrangements, therefore set up a Presidential Commission into ICE Governance.
- 1.5 The Commission is an advisory body. Its purpose is to review the governance of the Institution to ensure it delivers its Royal Charter objects as effectively as possible, and to make recommendations to the Council and Trustee Board.
- 1.6 This is the Commission's Interim Report. The report and its 19 Interim Findings have been unanimously endorsed by the Commission.
- 1.7 The purpose of this report is to summarise the first two stages of the Commission's work: evidence-gathering; and development of interim proposals. This Interim Report will form the basis for further consultation with the ICE members, Trustee Board, Council and others, which the Commission will take into account in developing its Final Report.
- 1.8 The Interim Report comprises three volumes:

Vol 0: Summary Report	provides summary analysis and considerations and explains the 19 Interim Findings
Vol 1: Full Report	provides more detail with references and Annexes
Vol 2: Evidence & Submissions	publishes the material submitted to the Commission during the Stage 1 consultations via open evidence sessions, workshops with ICE Boards and Committees and submissions from ICE members and Specialist Knowledge Societies

2. About the Institution of Civil Engineers

2.1 Purpose

- 2.1.1 The object of the Institution, set out in its Royal Charter, is: 'to foster and promote the art and science of Civil Engineering'.
- 2.1.2 ICE is a global organisation with its head office in London. It relies heavily on the engagement, enthusiasm and professionalism of its members, particularly those who actively engage in its activities. Of its 92,000 members, around 46,000 are professionally qualified and are voting members for the purposes of elections and governance ballots. Of the remainder, the vast majority are graduate members (who have been awarded a qualifying degree) and student members (who are studying for a qualifying degree); collectively the graduate and student members refer to themselves as 'aspiring members' (which also includes those moving up through the qualification grades).
- 2.1.3 This is why ICE is known as a global membership organisation.
- 2.1.4 However, the Institution is also a charity, registered as such in England and Wales and in Scotland. This provides significant advantage to the Institution in financial terms, and also to its members whose subscriptions would otherwise be much larger.
- 2.1.5 As with all charities, the Institution exists to provide public benefit. ICE's charitable object is the same as its Royal Charter object: to foster and promote the art and science of civil engineering. It does so mainly by educating, qualifying and regulating civil engineers.
- 2.1.6 So, while the Institution is a membership organisation which could not function without its members, it exists not for the benefit of its members but for the public good.

2.2 Current Governance Arrangements

- 2.2.1 The current ICE Governance arrangements are defined in the Royal Charter, the By-Laws, the Regulations and the Terms of Reference for the Trustee Board and the Council.
- 2.2.2 Together, these give authority to the top-level governance structures.
- 2.2.3 While the Charter, By-Laws and Regulations are the Institution's definitive governing standards, they are of necessity couched in legal terms which means they are not easy to digest.
- 2.2.4 The Commission therefore provides at Annex C a plain English summary of the ICE's current governance structures, as well as the previous arrangements that were superseded on 6 November 2018. Also, at Annex D there is a history of ICE governance since its establishment in 1818.

2.2.5 In summary the Institution's top-level governance arrangements comprise:

- a Trustee Board which is responsible for governance decisions, where the board and individual trustees take collective responsibility; and
- a Council whose main role is advisory, debating the strategic issues for civil engineering and the profession, tendering advice to and representing the views of the membership to the Trustee Board, and with some approval powers.

2.2.6 The principal roles of the Trustee Board are to:

- ensure that ICE pursues its activities in accordance with its Royal Charter and By-Laws, complying with relevant legislation and the requirements of its regulators;
- act in the best interests of the Institution as a whole to maintain its reputation, set its vision and strategy; and direct its activities;
- approve the ICE Plan and budget for the delivery of the Institution's objectives;
- ensure effective delegation, control and risk assessment and management systems are set up and monitored; and
- direct, monitor and coordinate the activities of committees, panels and sub-committees to which it has delegated authority.

2.2.7 The Trustee Board comprises 12 members:

President	1	(Chair) (recommended by the Trustee Board's Nomination Committee ¹ (NomCo) and approved by the Council)
Senior Vice-President	1	(recommended by the Trustee Board's NomCo and approved by the Council)
Other Vice-Presidents	6	(min 2, max 6) (recommended by the Trustee Board's NomCo and approved by the Council)
Council Members	3 ²	(elected by Council)
Member	1	(recommended by the Trustee Board's NomCo and approved by the Council)

2.2.8 The principal roles of the Council are to:

- meet regularly to debate issues of relevance to civil engineering, the Institution and society, to understand and recognise the implications of the changing nature of civil engineering and to support the Trustees in ensuring ICE is considered a global centre of excellence championing the role Civil Engineering plays at the heart of Society;
- tender advice to the Trustee Board concerning the conduct of ICE's affairs generally, including its direction and strategy, and on any other matters referred to it by the Trustee Board;

¹ For further details of the Nomination Committee (NomCo) see section 8.

² In 2018-19, under transitional arrangements, there are 4 Council members and no nominated member.

- to represent the views of the membership to the Trustee Board;
- elect three members of the Council to the Trustee Board;
- approve or not approve, annually, the appointment of the Trustees - ensuring the membership retains control of the direction of its Institution; and
- elect three members of the Council to the NomCo.

2.2.9 The Council comprises 38 members:

President	1	(recommended by the Trustee Board's NomCo and approved by Council)
Senior Vice-President	1	(recommended by the Trustee Board's NomCo and approved by Council)
Immediate Past President	1	(ex-officio)
General Council Members	15	(elected by voting members of the various grades)
UK Regional Members	12	(elected by voting members in the Region)
International Members	5	(elected by voting members in the Int Area)
Graduates	3	(elected by Graduate members)

2.3 Governance Changes

- 2.3.1 During 2018, ICE adopted the new governance arrangements summarised above. The process was not without controversy and led to a Special General Meeting. While consideration of that process is not within the Commission's remit, it is important to understand the context for this review.
- 2.3.2 In June 2018 the ICE Council (which at the time was the trustee body) put proposals to change the Institution's governance structure to a ballot of the members.
- 2.3.3 Soon after the ballot proposals were announced, some ICE members expressed concern at a lack of information about the proposed governance changes. Before the member ballot closed, the Institution received a petition to hold an SGM where the resolutions to be tabled expressed disappointment with ICE's handling of the ballot and called on the Council to formulate new proposals for ICE governance following extensive consultation.
- 2.3.4 When the ballot closed on 16 July 2018, the proposed governance changes had been approved by around 70% of those voting. And on 31 July 2018, the SGM resolutions were carried by 60% to 65% of members present at the meeting.
- 2.3.5 A special Council meeting was held on 4 September 2018 to consider the position. The Council continued to believe the governance changes were broadly the right approach; and it had legal advice to say there was no alternative but to implement the changes approved by the membership. At the same time, the Council accepted the results of the SGM and recognised the legitimate concerns expressed at that meeting about the need for effective communications. It therefore decided to accept the result of the SGM and implement a full governance review.

3. About the Commission

3.1 Establishment

- 3.1.1 At its meeting on 4 September 2018, the ICE Council made two key decisions:
- to implement new governance arrangements that had been approved by a ballot of the corporate members (taking effect on 6 November 2018); and
 - to establish a Presidential Commission into ICE Governance in line with resolutions passed at a Special General Meeting of 31 July 2018.
- 3.1.2 The ICE Council meeting of 11 December 2018 confirmed the Commission's Terms of Reference (Annex A) and appointed its members (Annex B).
- 3.1.3 The Commission members reflect the diverse nature of the Institution and include a number of external members with strong experience of governance.

3.2 Terms of Reference

- 3.2.1 The Commission's Terms of Reference (Annex A) require it to:
- a. consult widely within the Institution as to what our members expect in relation to the principles of Institution governance and the options for the governance models - the Commission should seek the views of the full spectrum of the membership;
 - b. take account of the views of ICE UK regions and international associations;
 - c. take account of the guidance from the Charity Commission and Engineering Council;
 - d. take account of the governance arrangements in similar bodies;
 - e. consider how the Institution's governance arrangements can help it to seize opportunities and manage risk in a rapidly changing environment, both now and in the future;
 - f. consider how to make Special General Meetings more accessible to ICE voting members;
 - g. consider means to identify and nominate the best candidates for the ICE President and Vice-President;
 - h. consider options for appropriate governance of the Institution, setting out those emerging options to the Council and Trustee Board during 2019; and,
 - i. having regard to Council's views and member consultation, make a recommendation to the ICE Council and Trustee Board.
- 3.2.2 The Commission's Terms of Reference do not include consideration of the process leading to the governance changes of 2018.

3.3 Programme of Work

3.3.1 The Commission is undertaking its work in three stages:

Stage 1: Key Governance Principles and Issues

- consider the key principles and issues in relation to the good governance of an Institution such as ICE (including those specified in the ToR);
- scrutinise the governance arrangements, developments and trends in a range of comparator organisations;
- understand the landscape in terms of key regulators / stakeholders such as the Charity Commission and Engineering Council;
- understand the concerns of members opposed to the recent ICE governance changes;
- seek comments from the ICE membership on the key principles and issues for ICE Governance;
- undertake discussions with most of the ICE's main Boards and Committees on the key principles and issues for ICE Governance; and
- seek comments from the Specialist Knowledge Societies on the key principles and issues for ICE Governance.

Stage 2: Developing Proposals for Future ICE Governance

- review the key issues, concerns and expectations from the Stage 1 consultations;
- consider options for future governance and develop interim proposals; and
- seek input from the Council and Trustee Board.

Stage 3: Consulting and Reporting

- consult the membership, key ICE Boards and Committees and the Specialist Knowledge Societies on the interim findings and proposals;
- finalise its recommendations; and
- develop a final report to the ICE Council and Trustee Board.

3.4 Communication

3.4.1 The Commission has tried hard to communicate effectively with ICE members. It has:

- established a web page which has a permanent link prominently displayed on the ICE home page;
- posted frequent updates about the work of the Commission on the web page;
- uploaded comprehensive information relevant to the work of the Commission including: Terms of Reference; Membership; submissions to open evidence sessions; background papers; minutes of meetings;
- issued a dedicated email to all members from the Chair to introduce the work of the Commission, highlight the web page; and seek comment on the key principles and issues of good governance;

- included updates and links to the web page in six other member emails;
- issued six ICE news releases;
- arranged for New Civil Engineer to publish in its February issue a Viewpoint column by the Chair about the work of the Commission with a link to the web pages;
- held open evidence sessions during Stage 1 of the review, which ICE members were welcome to attend as observers;
- published this Interim Report;

3.4.2 Further details about the Commission's communications activity are given in Annex E.

3.4.3 The purpose of these communications was to inform ICE members about the work of the Commission as part of its commitment to consult widely within the Institution. These consultations are detailed in section 4.



4. Gathering Information and Evidence

4.1 Stage 1 Consultation

4.1.1 During Stage 1 of its work, the Commission gathered significant information and evidence from a wide range of sources as to the key principles and issues for the good governance of an Institution such as ICE; it also heard a range of opinion about the Institution's current governance arrangements introduced in November 2018.

4.1.2 The Commission consulted by:

- taking formal evidence at open sessions from 14 ICE members representing a wide range of views, grades and geographical locations as well as an independent specialist in trustee governance;
- seeking the views of ICE members through seven emails to members; an article in the February edition of NCE; and a consultation pack on the Commission web page, resulting in some 35 substantive submissions, all of which have been seen by the Commission;
- holding facilitated workshops with most of the main ICE boards and committees³ using the consultation pack to stimulate debate; and
- seeking the views of the ICE's 15 Specialist Knowledge Societies.

4.1.3 The body of material resulting from these evidence sessions, member submissions, reports from main Boards and Committees and responses from the Specialist Knowledge Societies is reproduced in Volume 2 of this Interim Report. The key themes arising from these consultations are set out in Annex F of this volume.

4.1.4 Our Stage 1 consultations have been thorough and wide-ranging in line with our Terms of Reference. These consultations were most valuable in helping the Commission to determine the scope of the key issues to be addressed and to understand the wide range of views, sometimes opposing views, on those issues.

4.2 Comparator Organisations

4.2.1 The Commission also researched the governance arrangements of 9 comparator Institutions in engineering and the built environment⁴.

4.2.2 The details are set out in Annex G but in summary are:

- all are incorporated by Royal Charter and all are registered charities.

³ ICE Trustee Board
ICE Council
UK Regional Affairs Committee (including subsequent submissions from UK Regions)
International Committee
GSNet Executive Committee
Learning Society Committee
Audit Committee

⁴ IChemE, IET, CIHT, IMechE, IStructE, CIWEM, RIBA, RTPI and RAEng

- all of the bodies reviewed are governed (or, in the case of RIBA, proposed to be governed) by a Trustee Board varying in number between 11 and 17 trustees - there is a cluster of six bodies with trustee numbers between 11 and 13 (including ICE which has 12), and four bodies have a somewhat larger number of trustees in the range 15 to 17 members;
- in most of the bodies, the President chairs the Trustee Board for their term of office, but three are chaired by a trustee other than the President;
- the number of Vice Presidents for each body ranges from 1 to 8 with ICE having 7 VPs, the second largest number;
- the arrangements for the appointment of trustees vary and are relatively complex - even within a particular body there are often different methods of appointment for distinct elements of the Trustee Board.
- all of the comparators have a Council / Congress / Assembly to act as strategic advisory body (except the Royal Academy).
- all of the comparators have provision for a Special General Meeting that can be requisitioned by members of the body, but only three provide for members to vote remotely with the remainder requiring attendance at the SGM in person.

4.3 Good Governance Principles

4.3.1 The Commission considered a paper by its Executive Secretary on Key principles and structures for good governance which is reproduced at Annex H. These are set out in seven principles:

1. Organisational purpose
2. Leadership
3. Integrity
4. Decision-making, risk and control
5. Board effectiveness
6. Diversity
7. Openness and accountability.

4.4 Stage 2 – Development of Interim Report

4.4.1 In developing this Interim Report, the Commission took close account of the views expressed during Stage 1 and applied its judgement and experience to determine its interim positions and options on the various issues.

4.4.2 These are set out in the following sections of this Report.

5. ICE's Top-Level Governance Structure

5.1 The Issue

- 5.1.1 The Commission has considered from first principles the fundamental issue of ICE's top-level governance structure.
- Should the trustee body be a large Council or a compact Trustee Board?
 - Is the current arrangement of a compact Trustee Board with a larger, mainly advisory Council an appropriate structure?
 - Are there compelling reasons to go back to a large Council as the trustee body?
- 5.1.2 For more than a decade, ICE operated with a 44-member Council as trustees, with a 13-member Executive Board which was not prescribed in the By-Laws but comprised the President and seven Vice-Presidents with the remaining five members drawn from the Council.
- 5.1.3 Although the Council was asked to approve all major decisions, in practice the Executive Board was the de facto decision-making body for many issues, benefitting from the advantages of a smaller group meeting more frequently, having more focussed discussion, and more able to steer a consistent course on sensitive matters. It was the Executive Board which took many of the decisions that would normally fall to a trustee body – for example, the commercially sensitive discussions with EMAP about the future of NCE – and when such matters had been largely resolved, the Council was then asked to endorse them.
- 5.1.4 While that arrangement worked reasonably well, it was not appropriate to expect the Council as trustees to take legal responsibility for decisions effectively taken by a subset of their membership (the Executive Board). One of intentions of the 2018 governance changes was to recognise the current arrangements by adopting the model of a compact Trustee Board and a larger, mainly advisory Council. So, in many ways, those changes largely placed formal governance around the existing practice.
- 5.1.5 However, one of the themes from the Stage 1 consultation responses is the perception, and in some cases the strong perception, that ICE's governance arrangements have become remote from, and lack accountability to, ICE members. Some submissions indicated a view that the Trustee Board is out of balance, with the influence of the three Council members elected by the Council being heavily outweighed by the eight (nominated) members of the Presidential team and the member nominated by the Trustee Board's NomCo. This is exacerbated because each member of the Presidential team is in charge of a portfolio, whereas the others are not. This all contributes to a perception that ICE is controlled by a self-selecting and self-perpetuating group. In evidence, it was referred to as a 'them and us approach', a 'governing elite' and 'upstairs downstairs governance'.

- 5.1.6 In other evidence, a trustee (not on the Presidential team) said this is not the reality. While the Commission has not formally observed Trustee Board or Council meetings, we heard from multiple sources that, in both the current Trustee Board and the previous Executive Board, the approach is and was constructive and collegiate, with no evidence of the Presidential team operating to confound the others in this regard. In addition, we heard that the current Trustee Board sees itself and the Council as two bodies working harmoniously to serve the Institution. These sentiments were confirmed by the Commission members who sit on the Trustee Board and/or Council.
- 5.1.7 But whether it is perception or reality does not really matter - perception can be just as powerful. And, in any case, we should develop governance arrangements that will endure for the long term, should they be tested by a different culture in the future.

5.2 Advice on Board Size and Skills

- 5.2.1 To assist with considering this strategic issue from first principles, the Commission's Executive Secretary (who has extensive experience of trustee governance and is Vice-Chair of The Association of Charitable Organisations) offers the following professional advice (*in italics*).
- 5.2.2 *The board size should be the right size to govern effectively – there is no 'right' or 'wrong' size of board. The Charity Governance Code⁵ recommends a board of at least five but no more than 12 trustees to ensure there are enough people with the range of skills needed to carry out the board's work. But also small enough to ensure that trustees / directors can work together as a team with each fully participating in decision making. This underpins the recommended practice of the Charity Governance Code that the board and individual trustees must take collective responsibility for its decisions⁶.*
- 5.2.3 *The relative merits of larger and smaller boards may be summarised as follows:*

5.2.4 *Larger Board*

Pros:

- *a larger size provides enough people to more easily manage the workload of the board*
- *strategic objectives such as grant-making, investment and fundraising strategies become less of a burden when the responsibility can be divided amongst members*
- *more perspectives and experiences are represented*
- *meetings are often formal making it easier to keep order*

Cons:

- *bigger boards may not be able to engage every board member in a meaningful activity, which can result in loss of interest*
- *meetings are more difficult to schedule*
- *overall cohesion can be more difficult to achieve*
- *it may be more difficult to create opportunities for interactive debate, giving less time for in-depth discussions*

⁵ Charity Governance Code para 5.6.2: 'A board of at least five, but no more than 12 trustees is typically considered good practice'.

⁶ Charity Governance Code para 2.4.1: Leading the charity: 'The board and individual trustees must take collective responsibility for its decisions'.

5.2.5 *Smaller Board*

Pros:

- *decision-making, communications and interactions are easier. Board members more easily get to know each other as individuals creating positive chemistry*
- *often easier to reach a consensus*
- *enables the Board as a whole and individual trustees to take collective responsibility for decisions*
- *potential satisfaction from the charity's work can be greater due to constant and meaningful involvement*
- *every trustee has the opportunity to participate fully and make a difference*
- *Board members are ready to dig deeply into important issues and can have greater accountability*

Cons:

- *potentially heavier workload - may not be possible due to time constraints / other commitments*
- *larger strategic priorities may become more of a burden on the shoulders of a few*
- *important perspectives or opinions might not be fully represented*
- *there may not be enough opportunity to reflect diversity / experience amongst members*

5.2.6 *According to a US study by Bain Capital Private Equity the optimal number of directors for boards to make a decision is seven. This research went on to report that every added board member after that decreases decision making by 10%. While this should be regarded as indicative, it does illustrate the point.*

5.2.7 *In summary:*

- *The advantages of smaller boards typically include faster and better decision making, enabling the board as a whole and individual trustees to take collective responsibility for decisions. Smaller boards tend to spend more time together, form closer bonds, and are typically willing to give everyone a fair say. The main disadvantage of a smaller board is the time and energy required by each individual member and to manage this effectively, so trustees do not feel overburdened.*
- *Having larger numbers of board members allows for a wider range of views and gives boards the advantage of 'institutional memory' where longer term members will remember much of the organisation's history. There is also the opportunity with larger boards to bring a bigger network of contacts to the table to help with the mission. However, having many members with widely differing opinions places a greater burden on the Chair (or in some cases the CEO) to resolve the differences and forge a way forward. Other board members may disengage if they feel their voices are not being heard. Larger boards also tend to have more committees which need additional support.*

5.2.8 The Commission also took evidence in open session on this point from Dr Andrew Purkis OBE, who is an independent specialist in charity governance, the Chair or Vice Chair of six UK charities, and a former Charity Commissioner. He said that, 'The big problem with large boards is they become very unwieldy in taking decisions in an environment of increasingly demanding responsibilities. With a large number of people it becomes difficult to have a focussed discussion – there is a tendency for some members to make

set speeches rather than to engage in debate, and it is difficult for all trustees to contribute meaningfully. There would need to be pressing and justifiable reasons to go above the recommended maximum of 12.'

5.2.9 Finally, it is important to note a fundamental principle of trustee governance: that trustees are individually and collectively responsible for the decisions of the trustee board. This is clearly explained in the Charity Commission publication 'The Essential Trustee'⁷. The larger the Trustee Board, the more difficult it is to uphold this fundamental principle.

5.3 Analysis and Consideration

5.3.1 Therefore, the key reasons in favour of a compact Trustee Board with a larger, mainly advisory Council appear to be:

- to make decisions effectively, providing clear and consistent direction;
- to allow every trustee to make a meaningful contribution to numerous trustee decisions (both strategic and tactical) in a way that allows each to take individual and collective responsibility;
- to strengthen board effectiveness, timely decision-making, legal compliance and accountability;
- to focus on risks and opportunities in a rapidly changing environment;
- to avoid the previous practice of expecting the Council as trustees to take legal responsibility for decisions effectively taken by a subset of their membership (the Executive Board) – see paras 5.1.2 to 5.1.4; and
- to benefit from the advice of the larger, representative Council on strategic issues facing the profession and the Institution.

5.3.2 In the Stage 1 consultation, the weight of opinion was in favour of a compact Trustee Board and a larger, mainly advisory Council (subject to the important proviso of reconsidering the balance on the Trustee Board and the method of appointing trustees).

5.3.3 However, a significant minority in the Stage 1 consultation advocated a return to the previous arrangement of a large Trustee Council. The two key reasons that seem to underpin this preference are:

- the need for the Trustee Board to be larger so it can fully represent the various ICE grades and geographical locations, and therefore demonstrate better accountability to the members; and
- the need to avoid narrow thinking by a smaller, and perhaps unrepresentative decision-making group.

⁷ The Essential Trustee Section 6.2:

Trustees must act collectively (jointly). No one should be able to direct the trustees or drive decisions through without sufficient consideration. Trustees who simply defer to the opinions and decisions of others aren't fulfilling their duties.

Decisions don't usually have to be unanimous (depending on your governing document), but once the trustees have made a decision, they must all comply with it, including any who disagree.

- 5.3.4 These are important issues, perhaps addressed to some extent by the presence of the mainly advisory Council in the current arrangements, together with the proposals in later sections of this report to change the balance, composition and method of appointing the Trustee Board and the proposals to strengthen the role of the Council.
- 5.3.5 On the question of representation, the Commission explored with Dr Andrew Purkis (in an open evidence session) the concept that the trustee board of a membership organisation should represent various constituencies. In discussion he said that:
- It is important for a board to understand the views of its members and, in the case of a charity, its beneficiaries.
 - It is a gift to the charity when trustees use their perspectives and experiences, but they are not trustees to champion a particular view.
 - Trustees sometimes assume that they must speak for, or vote in accordance with the wishes of, the group they represent – but that is a misunderstanding. Their role is to make decisions in the best interests of the organisation as a whole.
 - The best place for representatives is in a representative or advisory body (such as a Council).
 - The board must be careful to ensure that it is focused on the required skill set, rather than trying to be directly proportional of the beneficiaries or members.
- 5.3.6 This advice is underlined by the Charity Commission publication 'The Essential Trustee', which makes clear that a trustee must act in the Charity's best interests⁸.
- 5.3.7 The Commission is clear that the role of each trustee is to act in the interests of ICE as a whole, rather than to represent the views of any particular group or constituency.
- 5.3.8 On balance, therefore, it seems that the weight of argument favours the proposition of a compact Trustee Board with a larger, mainly advisory Council (subject to the important proviso of reconsidering the balance, composition and method of appointing the Trustee Board).
- 5.3.9 In the following sections, this proposition is tested against guidance from Charity regulators and the governance arrangements of comparator organisations.

⁸ The Essential Trustee, Section 6. Act in your charity's best interests:

You must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes;
- with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term;
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body.

5.4 Regulatory Guidance

- 5.4.1 The ICE is registered as an educational charity both in England and Wales and in Scotland. Charities in these countries are regulated respectively by the Charity Commission for England and Wales (the Charity Commission) and the Scottish Charity Regulator (OSCR).
- 5.4.2 Good practice for the governance of charities, including guidance as to the size of the Trustee Board, is given in the Charity Governance Code for Large Charities which is endorsed by the Charity Commission. Para 5.6.2 of the Code recommends that 'a board of at least five but no more than twelve trustees is typically considered good practice.'
- 5.4.3 The Commission probed the standing of the Code during the open evidence session with Dr Andrew Purkis. The Commission heard that:
- the Charity Commission will place more weight on the Code than purely advisory guidance;
 - the Charity Commission has stated that: 'the Commission has supported and endorsed the Code and encourages all Charities to read, follow and apply it, proportionate to their charity';
 - while the Charity Commission takes the Code seriously, it does not actively check for compliance; however, non-compliance would be taken into consideration in the event of a Charity Commission enquiry and it would look for a compelling rationale and persuasive reasons for a charity that has significantly exceeded the recommended board size of at least 5 and no more than 12.
- 5.4.4 In Scotland, the OSCR guidance is less specific, recommending only a minimum of three trustees. However, the Scottish Council for Voluntary Organisations' guidance on the question of the size of the trustee board is: 'It is good practice for your charity to have at least three trustees, usually consisting of: a chair, secretary and treasurer. There is no upper limit of trustees you can have, but too many could become unmanageable⁹.
- 5.4.5 A Charity Commission report¹⁰ of November 2017 summarised the results of its national survey which found that 'The typical size of a trustee board is between three and five trustees for smaller charities and between six and ten for larger charities. The overall average size of a charitable trustee board in the UK was 5.9 trustees.'
- 5.4.6 All of this evidence provides strong endorsement of the proposition that a compact trustee board¹¹ would be appropriate for an Institution such as ICE. It is clear that a trustee board of 44 members (the number in ICE's previous trustee Council) or even a 25-member trustee Council (as suggested in one of the evidence sessions) would significantly exceed the guidance and current practice.

⁹ Scottish Council for Voluntary Organisations <https://scvo.org.uk/setting-up-a-charity/frequently-asked-questions>

¹⁰ Taken on Trust: The Awareness and Effectiveness of Charity Trustees in England and Wales

¹¹ The Commission sets out in section 6 and para 6.1.4 its preferred configuration for a compact Trustee Board.

5.5 Comparator Organisations

5.5.1 The proposition of a compact Trustee Board with a larger, mainly advisory, Council is largely in line with the nine comparator bodies – professional institutions in the engineering and built environment sectors (see Annex G).

5.5.2 All of the comparators:

- are incorporated by Royal Charter and registered as educational charities;
- are governed (or, in the case of RIBA, proposed to be governed) by a Trustee Board varying in number between 11 and 17 trustees - there is a cluster of six bodies with trustee numbers between 11 and 13 (including ICE which has 12), with four bodies having a somewhat larger number of trustees in the range 15 to 17 members; and
- have a larger advisory Council / Congress / Assembly (apart from RAEng).

5.5.3 On the other hand, during the Stage 1 consultation, the Commission received some comments on this comparison:

- one of the members giving evidence highlighted other trustee organisations with boards of more than 12 (Universities, Geological Society of London, IET and the British Geotechnical Association); and
- in the response from one of the UK Regions we were advised 'not to follow the crowd and the approach by universities may offer a better comparison'.

5.5.4 While the comparator evidence may not in itself be conclusive, the Commission finds it significant in combination with its first-principles analysis and the regulatory guidance.

5.6 Commission Conclusions

5.6.1 This is a fundamental and strategic issue. During the Stage 1 Consultation there was a wide range of views expressed on this issue, and indeed there were opposing views.

5.6.2 Having considered the issues carefully, in depth, and from first principles, the Commission has concluded that:

- a compact Trustee Board (see earlier footnote 11):
 - is able to take effective decisions, giving clear and consistent direction;
 - is collectively accountable and legally compliant;
 - focuses on risks and opportunities in a rapidly changing environment;
 - allows each trustee to make a meaningful contribution to debate and decisions, taking individual and collective responsibility; and
 - encourages trustees to act in the best interests of the organisation as a whole, rather than represent the views any particular group;
- the 38-strong Council, comprising directly elected members representing the various grades and geographical locations, is well-placed to act as a valuable advisory body, ensuring a breadth of views on key issues facing the profession and the Institution; and with some approval functions;

- these high-level governance arrangements largely align with the maximum number of trustees recommended as good practice by the Charity Governance Code; and
 - they are largely in line with those of the nine comparator bodies.
- 5.6.3 The Commission believes the proposals in later sections of this report (to change the balance, composition and method of appointing the Trustee Board and the proposals to strengthen the role of the Council) will address the concerns expressed by some in the Stage 1 consultation about the balance of the Trustee Board.
- 5.6.4 Accordingly, the Commission makes the following interim recommendation:

Interim Finding 1

The Commission **recommends** that ICE's top-level governance structures should comprise a compact Trustee Board with a larger, mainly advisory, Council. This is subject to considering the balance of the Trustee Board, the method of appointing its members and other matters discussed later in this Interim Report.



6. Composition and Balance of the Trustee Board

6.1 Re-balancing the Trustee Board

6.1.1 As mentioned in para 5.1.5, there appears to be a strong case to re-balance the ICE Trustee Board to address any perception that:

- the influence of the three Council members elected by the Council is heavily outweighed by the eight members of the Presidential team and the other member nominated by the NomCo; and
- there are 8 members 'in charge of things' (because the President and various VPs are each in charge of a portfolio, with defined responsibilities) and the other four are there as an (imbalanced) counter-weight.

6.1.2 One way of doing so is to adopt the key principle that a majority of Trustee Board members should be elected either directly or indirectly by the ICE voting membership.

6.1.3 There are other issues associated with that key principle which are discussed later in this report:

- The principle that all trustees should have equal levels of responsibility, with each trustee normally leading on a portfolio (section 6.2)
- the method of electing the elected members (section 7);
- the composition of the NomCo (section 8);
- who should chair the Trustee Board and Council (section 9); and
- the number of Vice Presidents (section 10).

6.1.4 Subject to discussing those issues, the key principle that a majority of Trustee Board members should be elected is satisfied by the Commission's proposed configuration for the Trustee Board (below). This proposal would normally have 12 members but, exceptionally, the Commission believes it is justifiable for the size of the Board to increase to 13 if that is required to fill a skills gap. (Ensuring the optimum mix of trustee skills, experience and diversity is a fundamental responsibility of any trustee board.) The proposed configuration is a compact board, in line with Interim Finding 1.

Proposed Configuration of the Trustee Board

- President
- 3 Succeeding Vice Presidents
- 7 elected members (to serve for 3 years with the opportunity for a further 3)
- 1 member nominated by the NomCo and approved by the Council (to serve for 3 years with the opportunity for a further 3)
- if required, a second member nominated by the NomCo and approved by the Council (to serve for a specified time)

- 6.1.5 In the normal configuration of 12 members, this means that the number of trustees who are nominated reduces from nine (75%) under the current arrangements to five (42%) in the proposed arrangements. Conversely, the number of trustees who are elected more than doubles from three (25%) to seven (58%).
- 6.1.6 Given the significance of the balance of the Trustee Board, it is vitally important for trustees to attend and discharge their responsibilities. The Commission believes the quorum for Trustee Board meetings should increase from the current 6, to at least 7 trustees. In addition, we make a recommendation in Interim Finding 13 (para 11.6.4) that the Trustee Board should have the power to dismiss a trustee for persistent non-attendance or other justifiable reasons.
- 6.1.7 Accordingly, the Commission makes the following interim recommendation:

Interim Finding 2

The Commission **recommends** the key principle that a majority of Trustee Board members should be elected by the ICE voting membership (subject to further consideration as to the method of election in section 7) giving the proposed Trustee Board configuration shown above, with a quorum of at least seven.

6.2 Equality of Responsibility

- 6.2.1 In the previous governance arrangements, the concept of having seven Vice Presidents, each responsible for a portfolio, was appropriate in the context of a 44-member trustee Council. However, this has not translated well to the Trustee Board, giving rise to the perception that there are eight trustees (the President and seven Vice Presidents) with specific responsibilities, who therefore out-rank, and collectively outweigh, the four other trustees who have only general trustee responsibilities.
- 6.2.2 In trustee governance, all trustees have collective responsibility for the decisions of the board and for the direction and leadership of the body.
- 6.2.3 It therefore seems appropriate to support a key principle that all trustees should have equal levels of responsibility. Each trustee should normally lead on a portfolio (ie focusing on a particular ICE function and/or chairing a particular Board or Committee). Of course, the President and Senior Vice President have their own special responsibilities and duties. There may occasionally be circumstances when it is not practical or appropriate for a trustee to carry a portfolio.
- 6.2.4 This has implications in relation to the apparent difference between Non-Succeeding Vice Presidents and 'ordinary' trustees, which is considered at section 10.3.
- 6.2.1 Accordingly, the Commission makes the following interim recommendation:

Interim Finding 3

The Commission **recommends** the key principle that all trustees should have equal levels of responsibility with each trustee normally leading on a portfolio.

6.3 Nominated Members

- 6.3.1 Currently, there is provision for one member of the Trustee Board to be co-opted - that is, nominated by the NomCo and approved by the Council. The purpose is to allow the Trustee Board to fill a gap in its skills, knowledge, experience and diversity by nominating an ICE member who might not be a member of Council or might not otherwise volunteer to stand for election. This appears to be a sensible provision.
- 6.3.2 There could be circumstances where, in order to fill a particular skills, experience or diversity gap for a limited period, there should be the provision to nominate a second such member, increasing the Trustee Board for a specified period.
- 6.3.3 Some trustee and charity boards reserve the right to nominate someone who is not a member, in order to fill a skills gap and to acknowledge that the Institution, as a charity, exists for the public benefit. It is likely that, in an Institution as large as ICE, it should be possible to find a member with the required profile to fill these nominated posts. However, it would be prudent for ICE to make provision to appoint a non-member if required in exceptional circumstances.
- 6.3.4 Accordingly, the Commission makes the following interim recommendation:

Interim Finding 4

The Commission **recommends** the key principle that:

- one member of the Trustee Board should be nominated by the NomCo and approved by the Council;
- if necessary, a second such member may be nominated by the NomCo and approved by the Council to fill a particular gap for a limited period, increasing the Trustee Board number for that period; and
- exceptionally, there should be provision to nominate a trustee who is not an ICE member.

6.4 Other Requests for Representation on the Trustee Board

- 6.4.1 The Stage 1 consultation produced three requests for particular groups to be represented on, or have access to, the Trustee Board:

- **Specialist Knowledge Societies**

The 15 Specialist Knowledge Societies are associated with, but separate from, the Institution. Most, but not all, of these Societies' members will be ICE members, and ICE provides limited administrative support.

In its response, PIANC-UK advocated that one member of the Trustee Board should be nominated by the Specialist Knowledge Societies. It said this might have been considered disproportionate in the past but, because the Specialist Knowledge Societies now deliver a large part of the Institution's learned society functions in their disciplines, it is now considered essential.

The Commission believes it is important for the Specialist Knowledge Societies to have strong links with the Learning Society Committee and through that to the ICE Council, particularly given our Interim Finding 12 that the Council should be the pinnacle of the Learning Society.

- ICE Staff

One ICE member suggested that one member of ICE staff should be directly elected to the Trustee Board by employees of ICE. Presumably this is to represent staff interests.

- Graduates and Students

In their evidence, GSNet and the Graduates on Council said there should be further opportunities for aspiring members to be part of discussions, so that aspiring members can be actively involved in key ICE issues; and they wanted a Trustee Board of appropriate size and diversity to maintain a thorough understanding and represent the needs and views of all aspiring members. During the discussion, one of the representatives giving evidence said this did not mean there should be a place reserved for a graduate on the Trustee Board.

6.4.2 If any group is given a place on the Trustee Board to represent their particular interests, it would give those groups significant influence, more than the many other ICE groups or constituencies (ie grades, geographical location or specialist interests).

6.4.3 As discussed in paras 5.3.5 to 5.3.7, the role of each trustee is to act in the interests of ICE as a whole, rather than to represent the views of any particular group or constituency.

6.4.4 It is not clear how this representative role could be reconciled with the duties of a trustee to act in the interests of the organisation as a whole.

6.4.5 Accordingly, the Commission does not recommend allocating a seat on the Trustee Board to represent any particular group or constituency, but rather to emphasise the need for the Trustee Board to identify gaps in the profile of its composition and to seek new members with the necessary skills, experience, background and diversity to fill the gap.

6.4.6 In addition, the Commission endorses the good practice of a trustee board being aware of the external and internal environment by regularly inviting selected guests to present to and, where appropriate, to observe board meetings. The Commission believes this should particularly include aspiring members. We consider this in detail in section 12 Transparency and Engagement.



7. Method of Election to the Trustee Board

7.1 Background

- 7.1.1 In section 6 and Interim Finding 2 the Commission recommends the key principle that a majority of Trustee Board members should be elected by the ICE membership. We propose that seven members out of a Trustee Board of 12 (or exceptionally 13) members are elected. This section considers the options for electing these trustees. It is likely that two, or sometimes three, trustees will need to be elected each year.
- 7.1.2 By way of background, By-Law 27 provides that trustees must be members of the Institution, and the Trustee Board Terms of Reference make clear this may be of any grade.
- 7.1.3 The By-Laws also set out which ICE members may vote in elections and ballots. These are known as voting members¹². Unfortunately, only a small proportion¹³ of ICE's voting members, less than 10%, exercise their right to vote in elections. We consider this further in section 12 - Transparency and Engagement.
- 7.1.4 It is worth noting the recommendations of the Charity Governance Code for Large Charities on the appointment of trustees:
- para 5.6.1: The board has, and regularly considers, the mix of skills, knowledge and experience it needs to govern, lead and deliver the charity's purposes effectively. It reflects this mix in its trustee appointments, balancing the need for continuity with the need to refresh the board.
 - para 5.7.2: The search for new trustees is carried out, and appointments or nominations for election are made, on merit against objective criteria and considering the benefits of diversity on the board. Regular skills audits inform the search process.
 - para 5.7.3: The charity considers using a nominations committee to lead the board appointment process and to make recommendations to the board.

¹² Voting Members: By-Law 4 sets out the voting rights as follows:

- Corporate Members (Fellows and Members both chartered and incorporated) may vote on all matters for which a vote of members is required by the Charter and By-laws;
- Technician Members may vote in elections of members to the Council; on any resolution relating to subscriptions; and on such other matters as the Council shall determine, provided that such matters do not require the approval of a Special Resolution or relate to the professional qualifications or professional conduct of members;
- Graduate members (but no others) shall be entitled to vote in the election of Graduate members to the Council.

¹³

The percentage of ICE's circa 46,000 voting members who voted in recent ICE Council elections was:
2016: 7.5%
2017: 8.9% (also voting on subscription increase)
2018: 9.2% (also voting on governance ballot)
2019: 9.1%

7.2 Options for Electing Trustees

7.2.1 The Commission identified a range of options for electing the seven elected members to the Trustee Board, and narrowed these to a shortlist of four, as follows:

Option A: Election by ICE voting members from an open candidate list – ie any ICE member can stand for election.

Option B: Election by ICE voting members from a focused candidate list – ie any ICE member who meets the requirements for the vacant trustee position can stand.

Option C: Election of Council members by the Council - noting that Council members have already been elected by ICE voting members.

Option D A combination of Option B and Option C in two separate elections. This would provide, say, three and four trustees respectively.

7.2.2 It is worth noting that, under Options A, B or D, it may be not be appropriate to retain the provision for the Council to re-appoint trustees annually if those trustees have originally been elected by the ICE membership.

7.2.3 Further details about the four options and their relative merits are set out below.

7.3 Option A: Election by ICE voting members from an open candidate list

7.3.1 In this option, applications to serve as a trustee are invited from the ICE membership. Any member may stand regardless of their skills or experience. All ICE voting members are entitled to vote for the candidate of their choice. The candidates who receive the highest number of votes are elected to fill the number of vacancies.

7.3.2 The relative merits of Option A are set out overleaf:

Pros:

- democratic – directly elected by the voting members
- allows a trustee to be elected directly, without first having to serve, and gain experience as, a member of Council

Cons:

- may not provide trustees to fill gaps in Trustee Board skills, experience or diversity (inc grades / geographical areas)
- potential for trustees to be elected to a leadership role in a large organisation on very little information about competency or skills, other than a single sheet manifesto
- trustees could be elected who may not be representative of the ICE membership - for example: as a result of a single-issue campaign, or through the support of colleagues in a large firm (a particular risk given the low proportion of members voting in ICE elections – circa 9%)
- trustees could be elected who have no prior experience or track record in ICE governance
- contrary to the recommendations of the Charity Governance Code in relation to selection on the basis of skills etc – see para 7.1.4 above)
- members will be asked to vote for Council members and Trustees in separate elections
- weakens the influence of the Council which no longer is able to elect any of its members to the Trustee Board
- less likely that members of Council will also be members of the Trustee Board thus reducing ties and risking differences between the two bodies
- less likely for trustees to be elected from under-represented groups – graduates, technicians etc (because it is an open election)

7.3.3 In summary, Option A is intuitively democratic, but it may not elect trustees who meet the skills, experience and diversity required on the Trustee Board; it is therefore contrary to the recommendations of the Charity Governance Code. Also, the low proportion of ICE members who normally vote (circa 9%) makes this election process susceptible to single issue candidates (who may find it difficult to act in the interests of the organisation as a whole) or to candidates from large firms (who will be supported by their colleagues). Finally, it weakens the influence of the Council who will no longer be able to elect any of their peers to the Trustee Board and it will be less likely that members of Council will also be on the Trustee Board, weakening links between the two bodies.

7.3.4 For these reasons, the Commission does not recommend Option A.

7.4 Option B: Election by ICE voting members from a focused candidate list

7.4.1 In this option, the Trustee Board reviews its composition in terms of skills, knowledge, experience and diversity (a key responsibility as recommended by the Charity Governance Code). For each position available, the Trustee Board identifies a candidate profile¹⁴ to optimise the mix. The profile could include a requirement for particular knowledge of skills, previous governance experience, or a particular ICE grade or geographical location (eg UK region or International Area). Applications are invited from ICE members who feel they meet the required profile for each vacancy. These are reviewed by the NomCo to establish a list of candidates who meet the requirements for each vacancy. All ICE voting members are entitled to vote for the candidate of their choice. For each vacancy, the candidate with the highest number of votes is elected.

7.4.2 The relative merits of Option B are set out below:

Pros:

- democratic – directly elected by the voting members:
- allows a trustee to be elected directly, without first having to serve, and gain experience as, a member of Council
- ensures trustees are elected to provide a Trustee Board with the optimum mix of skills, knowledge, experience and diversity
- aligns with the recommendations of the Charity Governance Code (in relation to Board skills, experience and diversity)

Cons:

- members will be asked to vote for Council members and Trustees in separate elections
- weakens the influence of the Council which no longer is able to elect any of its members to the Trustee Board
- makes it less likely that members of Council will also be members of the Trustee Board thus reducing ties and risking differences between the two bodies

7.4.3 In summary, Option B is democratic because any ICE member who meets the skills, experience and diversity requirements for the vacant Board position may stand for election by all voting members. It is therefore in line with the Charity Governance Code. However, it weakens the influence of the Council who will no longer be able to elect any of their peers to the Trustee Board and it will be less likely that members of Council will also be on the Trustee Board, weakening links between the two bodies.

7.5 Option C: Election of Council members by the Council

7.5.1 In this option, the Trustee Board reviews its composition in terms of skills, knowledge, experience and diversity (a key responsibility as recommended by the Charity Governance Code). For each position available, the Trustee Board identifies a candidate profile¹⁴ to optimise the mix. Applications are invited from Council members who meet those requirements and who wish to stand for election. These are reviewed by NomCo which establishes a list of candidates who meet the requirements for each vacancy. Council members vote for the candidates having regard to the required qualities. The elected trustees will serve for three years, even if their term on Council expires during that period.

¹⁴ The profile could include a requirement for particular knowledge of skills, previous governance experience, or diversity including from a particular ICE grade or geographical location (eg UK regions or International Areas).

7.5.2 The relative merits of Option C are set out below:

Pros:

- trustees will be drawn from Council members who are already elected by voting members
- trustees will be elected who have prior experience and a track record in ICE governance, as judged by their Council peers
- strengthens the influence of Council and the alignment between Council and Trustee Board
- more likely to be representative of the ICE membership as they are elected by Council which itself is representative of the various grades, UK regions and International areas
- account is taken of gaps in Trustee Board skills, experience or diversity, by notifying Council members of the requirements
- in line with the recommendations of the Charity Governance Code (in relation to Board skills, experience and diversity)

Cons:

- trustees cannot be directly elected without first having been elected to the Council, however their election could be subject to approval by the AGM
- there may not be sufficient members of Council able to satisfy the required skills and experience profile

7.5.3 In summary, Option C will elect Council members who have already been elected by ICE voting members. The candidates will meet the skills, experience and diversity requirements for the vacant Board position election. It is therefore in line with the recommendations of the Charity Governance Code. It maintains the influence of Council as candidates will be elected by and from the Council members, based on personal knowledge and track record. However, there may not be sufficient members of Council to satisfy the required skills, experience and diversity profile.

7.6 Option D: A combination of Option B and Option C in two separate elections

7.6.1 Option D would combine Options B and C to provide, say, three trustees directly elected by voting members from a focussed candidate list and four members elected from and by the Council.

7.6.2 As an example, four trustees elected from and by the Council could allow the opportunity for Council to elect a trustee with responsibility for:

- Council liaison / Vice Chair of Council;
- Learning Society;
- UK Regions; and
- International.

7.6.3 The relative merits of this option are set out below:

Pros:

- democratic – some trustees are directly elected by the voting members and others drawn from and elected by the Council (who themselves have been elected by the voting members)
- some trustees will have prior experience and a track record in ICE governance, as judged by their Council peers
- ensures trustees are elected to provide a Trustee Board with the optimum mix of skills, knowledge, experience and diversity
- strengthens the influence of Council and the alignment between Council and Trustee Board
- in line with the recommendations of the Charity Governance Code (in relation to Board skills, experience and diversity)

Cons:

- could be slightly complex, but this is mitigated because the separate elections are from two different constituencies

- In summary, Option D appears to combine the advantages of Options B and C, while mitigating their disadvantages. It is likely to produce a Trustee Board with the optimum mix of skills, knowledge, experience and diversity. Some trustees are nominated and directly elected by the voting members and others drawn from and elected by the Council (who themselves have been elected by the voting members). It maintains the influence of Council.

7.7 Comparator Bodies

7.7.1 The composition and methods of appointment to the Trustee Boards of ICE and the comparator bodies are set out in Annex G. In summary, the various methods of appointing trustees other than office-bearers such as the President are:

- elected from Council by Council (ICE, IStructE, RIBA, RTPI) (akin to Option C);
- nominated by NomCo / Trustee Board and approved by Council (ICE, CIHT, RTPI);
- applications invited for role profile / person spec, interviewed and selected by Trustee Board (CIWEM);
- applications invited for role profile / person spec, NomCo confirms suitability, voting members elect from approved candidates (IChemE) (akin to Option B); and
- candidates nominated by Trustee Board and members (in some cases against a skills profile), and elected by voting members (IET, IMechE, FEng) (akin to Option B).

7.8 Commission Interim Conclusions

7.8.1 The Commission's interim conclusions on the four options are:

- Option A is intuitively democratic, but it is unlikely to meet the fundamental requirement of electing trustees with the skills, experience and diversity required by the Trustee Board; it is therefore contrary to universally accepted good practice

and the recommendations of the Charity Governance Code. Also, the low proportion of ICE members who normally vote (circa 8%) makes this election process susceptible to single issue candidates (who may find it difficult to act in the interests of the organisation as a whole) or to candidates from large firms (who will be supported by their colleagues). Finally, it weakens the influence of the Council who will no longer be able to elect any of their peers to the Trustee Board and it will be less likely that members of Council will also be on the Trustee Board, weakening links between the two bodies. For these reasons, the Commission does not recommend Option A.

- Option B is democratic because any ICE member who meets the skills, experience and diversity requirements for the vacant Board position may stand for election by all voting members. It is therefore in line with the Charity Governance Code. However, it weakens the influence of the Council who will no longer be able to elect any of their peers to the Trustee Board and it will be less likely that members of Council will also be on the Trustee Board, weakening links between the two bodies.
- Option C will elect Council members who have already been elected by ICE voting members. The candidates will meet the skills, experience and diversity requirements for the vacant Board position election. It is therefore in line with the recommendations of the Charity Governance Code. It maintains the influence of Council as candidates will be elected by and from the Council members, based on personal knowledge and track record. However, there may not be sufficient members of Council to satisfy the required skills, experience and diversity profile.
- Option D appears to combine the advantages of Options B and C, while mitigating their disadvantages. It is likely to produce a Trustee Board with the optimum mix of skills, knowledge, experience and diversity. Some trustees are nominated and directly elected by the voting members and others drawn from and elected by the Council (who themselves have been elected by the voting members). It maintains the influence of Council.

7.8.2 The Commission's interim preference is for Option D, but we wish to test that by consulting on the relative merits of Options B, C and D.

7.8.3 Accordingly, the Commission makes the following interim finding:

Interim Finding 5

The Commission seeks further views on three of the four options for electing seven members to the Trustee Board:

- Option B: Election by ICE voting members from a focused candidate list – ie any ICE member who meets the requirements for the vacant trustee position can stand.
- Option C: Election of Council members by the Council - noting that Council members have already been elected by ICE voting members.
- Option D A combination of Option B and Option C in two separate elections. This would provide, say, three and four trustees respectively.

7.9 Voting Rights for Graduate Members

- 7.9.1 Currently, Graduate members may only vote to elect the three Graduate Members of Council.
- 7.9.2 In evidence, GSNet and the Graduates on Council advocated that aspiring members should be included in membership ballots.
- 7.9.3 An alternative view is that, if these are aspiring members, then there must be something for them to aspire to. The aspiration is professionally qualified membership of the Institution, which comes with the privilege of voting rights.
- 7.9.4 These are significant issues which are outside the Commission's Terms of Reference. However, if the outcome of the Commission's review is that elections for some of the trustees should be by ICE members (Options A, B or D), then it raises the question as to whether Graduate members should be part of the electorate. This is particularly relevant given that membership of the Trustee Board is open to any grade of member.
- 7.9.5 In turn that will raise the question as to whether Graduate members should be able to vote for all Council candidates, rather than just Graduates on Council.
- 7.9.6 In this regard, there is a clear distinction between Graduate members (who have graduated in an accredited degree course and pay an annual ICE subscription) and Student members (who have not yet graduated and do not pay a subscription).
- 7.9.7 While this is outside the remit of the current review, the ICE Trustee Board, Council and GSNet may wish to give further consideration to the issue of wider voting rights for selected membership grades in due course.
- 7.9.8 The Commission does recognise the importance of the Trustee Board engaging with aspiring members, and we make a recommendation in Interim Finding 15 (section 12.3).

8. The Nomination Committee

8.1 Background

- 8.1.1 Currently, a Nomination Committee (NomCo) is established by, and reports to, the Trustee Board. It is an influential committee, which plays a key role in shaping the Trustee Board by nominating Vice Presidents and a member of the Trustee Board. It is similar to the Selection Panel which existed under the previous governance arrangements.
- 8.1.2 Nominations made by NomCo, if endorsed by the Trustee Board, are then passed to the Council for approval. The Council could decide not to approve, in which case the NomCo makes an alternative nomination until a candidate is found who meets with the approval of the Council. In practice, however, it is likely that the Council will normally approve the NomCo's nomination, as it did with the recommendations of the previous Selection Panel.
- 8.1.3 The practice of identifying and considering individuals is clearly sensitive and confidential. It is right and entirely normal that the NomCo operates in private. However that necessity, coupled with the significance of the roles being nominated, does put the NomCo in a difficult position. In evidence, the Commission heard perceptions of NomCo as a 'shadowy body' with 'black hole processes'.
- 8.1.4 By contrast, the Commission was impressed with the degree of transparency offered by the Chair of NomCo in his evidence (see Volume 2, Section A), particularly the details of the 2018-19 NomCo process which the Commission has published on its web page as well as in Volume 2, with the agreement of the NomCo Chair.
- 8.1.5 However, perception is just as important as reality and, given the necessary confidentiality, any Nomination Committee faces the difficult task of winning the confidence of the organisation it serves. This is likely to be assisted by:
- appointing a Chair of the highest integrity (as ICE has done);
 - ensuring the right balance of NomCo membership;
 - adopting rigorous processes, balancing necessary confidentiality with appropriate transparency.

8.2 NomCo Membership

- 8.2.1 The key requirement for NomCo members is that, collectively, they should:
- be clear as to the expectations and requirements of the various roles; and
 - have a wide knowledge of ICE members who would be suitable for nomination to the various positions.
- 8.2.2 Under the current Terms of Reference approved by the Trustee Board, the NomCo comprises six to ten members of the Institution as follows:
- a Past-President of the Institution (Chair)
 - President (ex-officio)
 - Senior Vice President (ex-officio)

- at least three members of the Council elected by the Council;
- up to four other ICE members appointed by the Trustee Board on the advice of the Chair of the Nomination Committee.

The Nomination Committee shall be quorate if over half of its members are present including the President of the Institution.

- 8.2.3 For this initial year of NomCo, it was decided that the four other members should be members of the Council elected by the Council (in addition to the three already appointed by that method). This meant that the interim composition of the NomCo was the Past-President (Chair), President, Senior Vice President and seven members of the Council elected by the Council. In the event, only five members of the Council stood for the election and so all were elected. The remaining two positions were unfilled.
- 8.2.4 In evidence, the Chair of NomCo put forward the view that at least 6 members in person are needed for any meeting of NomCo. He said that, to ensure this, the current composition of no fewer than 6 and no more than 10 could be adjusted upwards by a small number, say no fewer than 8 and no more than 12.
- 8.2.5 During that evidence session, two benefits were identified in having some members of NomCo who are ICE members but not necessarily Council members:
- the number of Council members who can serve on NomCo may be limited because: some may be candidates for the various roles being considered by NomCo (Vice-President, Trustee etc); and members of Council in their final year cannot stand for election to NomCo; and
 - they may be able to add to the knowledge of candidates in the wider profession, supplementing the knowledge of the other NomCo members.
- 8.2.6 The Commission believes it is right that a majority of NomCo members should be drawn from the Council, which itself has been elected by ICE voting members and represents a wide range of grades and geographical locations. It is also appropriate that the NomCo should include the President and Senior Vice President.
- 8.2.7 In evidence, GSNet and Graduates on Council recommended there should be an aspiring member (ie a Graduate Member or Student Member) on the NomCo. The Commission accepts that proposal because it recognises aspiring members as the future of our profession and so they should be involved in the important decision making about the senior leadership of the Institution. All other grades of membership already have the opportunity to be represented on the NomCo.
- 8.2.8 These principles could be satisfied by the following NomCo composition (all to be ICE members):
- a Past-President of the Institution (Chair);
 - the President;
 - the Senior Vice President;
 - a Graduate or Student member nominated by GSNet;

- at least four and no more than eight other members, a majority of whom must be members of the Council elected by the Council (irrespective of whether they are members of the Trustee Board) with the others appointed by the Trustee Board on the advice of the Chair of the Nomination Committee.

This provides for a NomCo of between eight and twelve members.

8.2.9 Accordingly, the Commission makes the following interim recommendation:

Interim Finding 6

The Commission **recommends** that NomCo comprises between eight and twelve members of the Institution, including:

- a Past-President of the Institution (Chair);
- the President;
- the Senior Vice President;
- a Graduate or Student member nominated by GSNet;
- at least four and no more than eight other members, a majority of whom must be members of the Council elected by the Council (irrespective of whether they are members of the Trustee Board) with the others appointed by the Trustee Board on the advice of the Chair of the Nomination Committee.

8.3 NomCo Process

- 8.3.1 The Commission commends the current NomCo process of seeking the nomination of candidates (for Vice President etc.) by writing to Council Members, Past Presidents, Regional Chairs and Directors and also from the general membership via a news article¹⁵.
- 8.3.2 There is currently a Terms of Reference for the President (see section 10.1), and the Chair of NomCo advised us that, in future, NomCo will identify a role / person specification for any position it is considering, setting out the specific characteristics needed so that it can identify requirements and gaps. The Commission commends this good practice.
- 8.3.3 Obviously, it is also essential to gather detailed information as to how the candidates under consideration meet the role specification and to make nominations accordingly. One means of doing so is by interviewing candidates, if this is considered necessary by the NomCo.
- 8.3.4 When proposing a nominee to the Trustee Board and Council, it is important that NomCo can demonstrate to the Trustee Board and Council how the nominee meets the required characteristics of the role.

¹⁵ The number and source of nominations for Vice President received in recent years were:
 2016: Council: 8 Past Presidents: 3 Regions: 1 General Members: 0 Total: 12
 2017: Council: 2 Past Presidents: 6 Regions: 6 General Members: 1 Total: 15
 2018: Council: 5 Past Presidents: 1 Regions: 3 General Members: 0 Total: 9
 2019: Council: 9 Past Presidents: 4 Regions: 6 General Members: 5 Total: 24

(Note: these are the number of nominations not candidates – an individual may have been nominated more than once)

8.3.5 While respecting the confidentiality of the nominations process, the Commission commends the transparency of the report on the 2019-20 NomCo process presented to us in evidence by the Chair – this should be published as the NomCo Annual Report.

8.3.6 Accordingly, the Commission makes the following interim recommendation:

Interim Finding 7

The Commission **recommends** that NomCo:

- identifies a role specification for any position it is considering, setting out the specific characteristics needed;
- gathers detailed information as to how the candidates under consideration meet the role specification and makes nominations on that basis;
- demonstrates to the Trustee Board and Council how the nominee meets the required characteristics of the role; and
- publishes a summary of the process in a NomCo Annual Report, while respecting the confidentiality of the nominations process.

8.4 Disciplinary Board and Professional Conduct Panel

8.4.1 The Institution's Disciplinary Regulations set out the requirements for the composition of both the Disciplinary Board and the Professional Conduct Panel. Clearly, it is important to comply with these requirements to ensure due process in disciplinary proceedings.

8.4.2 It would be appropriate for NomCo to make the nomination to fill any vacancy in the Chair of the Disciplinary Board and the Chair of the Professional Conduct Panel, subject to approval by the Trustee Board and in accordance with the Disciplinary Regulations.

8.4.3 Each Chair should then nominate the members of their respective body: identifying the skills required; with applications sought through targeted advertising using the membership database; and ensuring compliance with the requirements set out in the Disciplinary Regulations. These nominations would be subject to approval by the Trustee Board in accordance with the Disciplinary Regulations. These provisions should be codified in the Terms of Reference for the Disciplinary Board and Professional Conduct Panel.

8.4.4 Accordingly, the Commission makes the following interim recommendation:

Interim Finding 8

The Commission **recommends** that NomCo makes the nomination to fill any vacancy in the Chair of the Disciplinary Board and Chair of the Professional Conduct Panel, for approval by the Trustee Board and in accordance with the Disciplinary Regulations.

Each Chair should then nominate the members of their respective body, ensuring compliance with the requirements set out in the Disciplinary Regulations, under procedures codified in the Terms of Reference for the Disciplinary Board and Professional Conduct Panel.

9. Chairing the Trustee Board and Council

9.1 Background

9.1.1 During the Stage 1 consultation a wide range of views, and indeed opposing views, were expressed on the question of whether the President should continue to chair the Trustee Board, or if a separate Chair should be appointed for a longer term.

9.1.2 In most of the nine comparator bodies, the President chairs the Trustee Board.

9.1.3 Three of the comparator bodies - CIWEM, RTPI and (shortly) IStructE - appoint a Chair of the Trustee Board who is not the President, although the President remains a member of the Trustee Board. The tenure and method of appointment is:

- IStructE (proposed)
Chair of the Trustee Board will be appointed through a process of advertising and interview. Term will be 2 years with the possibility of a further 2 years.
- CIWEM
Chair of the Trustee Board is one of the Trustees (not the President) who is elected by the other Trustees. Term is 3 years.
- RTPI
Chair of the Board of Trustees is elected by the General Assembly (equivalent to the Council). Term is 2 years (and may stand again for a further two-year term).

9.1.4 There are three principal options for chairing the ICE's top-level governance bodies. These are set out in more detail in the following sections, together with a discussion of their relative merits.

9.2 Option A: President chairs both the Trustee Board and the Council

9.2.1 There is the view that the President should be the unquestioned leader of the Institution and this requires the President to chair its governing body. This is why the President has always chaired the ICE's trustees, previously as Chair of the Council and latterly as Chair of the Trustee Board. The President would also Chair the Council, given the importance of its advisory role.

9.2.2 The relative merits of this option appear to be:

Pros:

- the President is the unquestioned leader of the Institution and it is essential that the President chairs its governing body, the Trustee Board
- as the President chairs both the Trustee Board and the Council, and promotes a collaborative and constructive approach between the two bodies, avoiding overlaps or gaps
- continuity is helped because the President will have already served a number of years as a succeeding Vice President

Cons:

- there could be a conflict if the President chairs both the Council and the Trustee Board when the Council is exercising its approval role
- the President's term of office is only one year so there is a risk of discontinuity in the chairing of the Trustee Board / Council
- chairing Trustee Board and Council requires additional time in a busy Presidential year

9.2.3 In summary, in Option A the President is the unquestioned leader of the Institution which requires the President to chair its governing body, ensuring strong alignment between the Council and the Trustee Board. The question of continuity is addressed by the fact the President will normally have served for three years as a succeeding Vice President. Any concerns about conflict of interest in the President chairing both the Trustee Board and the Council can be addressed in a number of ways, including: the appointment of a Vice Chair of Council to act if such an occasion arises; or the election by the Council of a chair who is not the President. If the President's time commitment becomes an issue, there should be the provision for the President to delegate the chairing of either the Council or the Trustee Board to the Senior Vice President.

9.3 Option B: President chairs the Trustee Board but not the Council

9.3.1 If the concern about a possible conflict of interest is so significant that it cannot be mitigated by the measures identified above, an option is that the President could Chair the Trustee Board while the Council could be chaired by, say, the Senior Vice President. The President would still be a member of the Council, although not its chair.

9.3.2 The relative merits of this option appear to be:

Pros:

- the President is the unquestioned leader of the Institution and it is essential that the President chairs its governing body, the Trustee Board
- continuity on the Trustee Board is helped because the President will have already served a number of years as a succeeding Vice President, before taking the Presidential baton
- there is a separation in the roles of Chair of the Trustee Board and Chair of the Council
- it facilitates Presidents who have limited time
- chairing Council could provide the Senior Vice President with a valuable lead-in to the Presidential year

Cons:

- the President's term of office is only one year so there is a risk of discontinuity in the chairing of the Trustee Board
- the President no longer chairs the Council, which may be seen as reducing its influence
- the separation of the roles of Chair of Council and Chair of Trustee Board may lead to differences between the two bodies

9.3.3 In summary, in Option B the President continues to be the unquestioned leader of the Institution chairing its governing body. The question of continuity in Trustee Board leadership is addressed by the fact the President will normally have served for three years as a succeeding Vice President. It reduces the time commitment for the President and addresses any concerns about conflict of interest. However, the President no longer chairs the Council, which may be seen as reducing its influence, and the separation in the roles of Chair of Council and Chair of Trustee Board may lead to differences between the two bodies.

9.4 Option C: President chairs the Council but not the Trustee Board

9.4.1 There is the view that it would be better to have a Chair of the Trustee Board who is not the President because:

- it provides better continuity, as the Chair would be in place for a number of years compared to the one year a President is in office;

- it avoids any conflict between the President's role as chair of both the Council and the Trustee Board; and
- it reduces the President's workload in a busy year.

9.4.2 In this option the President would still be a member of the Trustee Board, although not its chair.

9.4.3 The relative merits of this option appear to be:

Pros:

- there is a separation in the roles of Chair of the Trustee Board and Chair of the Council
- a longer term of office makes for better continuity
- it facilitates Presidents who have limited time
- the Chair may be able to allocate more time to the role than the President

Cons:

- the Trustee Board and therefore the Institution is not led by the President and leader of the Institution – a significant departure from the ICE tradition whereby the President has always led the governing body
- the President becomes a figurehead, with less actual authority than the Chair of the governance body (who will serve for 3 or 4 years)
- it might be more difficult to attract a high-quality President
- there is the risk of tension between the President and Chair resulting in less effective decision-making
- the executive team could experience less consistent direction, divided loyalties and could become embroiled in differences that may arise between the President and the Chair
- the separation of the roles of Chair of Council and Chair of Trustee Board may lead to differences between the two bodies
- While it may appear attractive to split the chairing of Council and Trustee Board, in effect it means that either the Council loses its leader, or the President doesn't lead the Institution.

9.4.4 In summary, Option C provides continuity, avoids any conflict between the President's role as chair of both the Council and the Trustee Board, and reduces the President's workload in a busy year. However, there are concerns that the President is no longer the leader of the Institution and becomes a figurehead (because the real power is with the chair of the Board); there is the risk of tension between the President and the Chair; and there could be less alignment between the Council and the Trustee Board.

9.5 Commission Interim Position

9.5.1 The Commission recognises the significance of these issues. It wishes to consult further on the three options given above. This will enable the Commission to develop a detailed recommendation in its Final Report.

9.5.2 Accordingly, the Commission makes the following interim finding:

Interim Finding 9

The Commission seeks further views on the following options for chairing the Trustee Board and Council:

- Option A: President chairs both the Trustee Board and the Council (with measures to mitigate any conflict of interest)
- Option B: President chairs the Trustee Board but not the Council
- Option C: President chairs the Council but not the Trustee Board

10. Roles of President and Vice Presidents

10.1 Role of the President

10.1.1 The NomCo seeks the nomination of candidates for Vice President (including those who may become President) by writing to Council Members, Past Presidents, Regional Chairs and Directors and also from the general membership via a news article (see para 8.3.1). These are considered by the NomCo (previously the Selection Panel) which makes recommendations for the approval of the Trustee Board and the Council.

10.1.2 During the Commission's Stage 1 consultation, there was no weight of opinion to change the current process of nominating a President for approval by the Council. Indeed there are strong arguments against doing so: divisive election campaigning; and the disinclination of what might be an excellent Presidential candidate to stand in an open election.

10.1.3 The Commission supports the current process and believes it is the best way to secure a President who has the experience and abilities to lead and represent the Institution.

10.1.4 However, the Commission is concerned about two aspects of the Terms of Reference for the President, which were agreed by the Council in October 2015. These appear to have governance implications:

- The time commitment of 'usually 3 to 4 days per month' set out in para 2 of the President's Terms of Reference.

This appears to be inappropriately low; it would be impracticable for the President to fulfil the duties set out in para 4 of the Terms of Reference within this time commitment. It would be unhelpful for an individual to accept the role of succeeding Vice-President on the basis of an unrealistically low time commitment, only to find that actual expectations are much higher. It amounts to mis-selling the role. This has governance implications if the President has insufficient time to fulfil the duties, or if a succeeding Vice President drops out, disrupting the Presidential succession.

- Para 4 of the President's ToR does not include the role of engaging with the ICE membership in the UK Regions and International Areas.

This is a key role that current and previous Presidents have seen as fundamental. Engagement with the membership contributes to an understanding of organisational purpose, one of the key governance principles. It is important for good governance that the leader of the Institution takes a prominent role in such engagement.

10.1.5 Accordingly, the Commission makes the following interim recommendation:

Interim Finding 10

The Commission **recommends** that the President's Terms of Reference are revised to specify a more realistic time commitment and to include the important role of engaging with the ICE membership in the UK Regions and International Areas.

10.2 Succeeding Vice Presidents

- 10.2.1 Currently there are three Succeeding Vice Presidents who are expected to progress to the role of President, subject to annual re-appointment. This means that an individual being considered / approached in relation to the role normally has to give significant service for five years (three as Succeeding Vice President, one as President and one as Immediate Past President).
- 10.2.2 The Commission realises that is a significant commitment, particularly in today's more mobile market, where a change in job is more frequent than in the past. Indeed, there have been unforeseen changes in the Presidential succession plan in recent years.
- 10.2.3 We therefore considered if it would be appropriate to reduce the time as a succeeding Vice-President to two years. However, on balance, the Commission believes it is more important to preserve the continuity and building on ICE experience for three years, thus retaining three Succeeding Vice-Presidents.

10.3 Non-Succeeding Vice Presidents

- 10.3.1 ICE currently has seven Vice Presidents. In addition to the three succeeding Vice Presidents, there are also four 'non-succeeding' Vice Presidents. The non-succeeding Vice Presidents hold significant responsibilities for various ICE governance functions and chair principal Boards or Committees. They are not in the line of Presidential succession, although there is always the possibility they may become so.
- 10.3.2 The distinction between the three succeeding Vice Presidents and the four non-succeeding Vice Presidents has always been somewhat awkward. The distinction is not made on the ICE website and many ICE members are unaware of it; it is often assumed that all will succeed to the Presidency in due course. When we met the Trustee Board, one of the non-succeeding VPs expressed these concerns.
- 10.3.3 This is the second highest number of Vice Presidents in any of the comparator bodies – only the IET has more with eight Vice Presidents.
- 10.3.4 In section 6.2 we discussed the key principle that all trustees should have equal levels of responsibility with each trustee normally leading on a portfolio.
- 10.3.5 In order to uphold that key principle, there appear to be two options to avoid Non-Succeeding Vice-Presidents being seen as superior to other 'ordinary' trustees:
- Vice Presidents will be those trustees who are expected to succeed to the position of President, with other members of the Trustee Board holding the title 'Trustee', with all members normally allocated a particular portfolio; or
 - all members of the Trustee Board (except the President) should have the title of Vice-President, with all members normally allocated a particular portfolio.
- 10.3.6 Whichever option is chosen, there should be transition arrangements for current non-succeeding Vice Presidents – none should lose their title.

10.3.7 Accordingly, the Commission makes the following interim finding:

Interim Finding 11

The Commission seeks further views on the following options to uphold the key principle that all trustees should have equal levels of responsibility, and to avoid Non-Succeeding Vice-Presidents being seen as superior to other 'ordinary' trustees:

- Vice Presidents will be those trustees who are expected to succeed to the position of President, with other members of the Trustee Board holding the title 'Trustee', and all members normally allocated a particular portfolio; or
- all members of the Trustee Board except for the President should have the title of Vice-President with all members normally allocated a particular portfolio.

11. Roles of Trustee Board and Council

11.1 Background

11.1.1 The ICE's current high-level governance arrangement is a 12-member Trustee Board and a 38-member Council which operates as a mainly advisory, strategic body.

11.1.2 The principal roles of the Trustee Board are to:

- ensure that ICE pursues its activities in accordance with its Royal Charter and By-Laws, complying with relevant legislation and the requirements of its regulators;
- act in the best interests of the Institution as a whole to maintain its reputation, set its vision and strategy; and direct its activities;
- approve the ICE Plan and budget for the delivery of the Institution's objectives;
- ensure effective delegation, control and risk assessment and management systems are set up and monitored; and
- direct, monitor and coordinate the activities of committees, panels and sub-committees to which it has delegated authority.

11.1.3 The principal roles of the Council are to:

- meet regularly to debate issues of relevance to civil engineering, the Institution and society, to understand and recognise the implications of the changing nature of civil engineering and to support the Trustees in ensuring ICE is considered a global centre of excellence championing the role Civil Engineering plays at the heart of Society;
- tender advice to the Trustee Board concerning the conduct of the ICE's affairs generally, including its direction and strategy, and on any other matters referred to it by the Trustee Board;
- to represent the views of the membership to the Trustee Board;
- elect members of the Council (currently three) to the Trustee Board and annually approve the nomination or re-appointment of the President, Vice Presidents and other members of the Trustee Board;
- or not approve, annually, the appointment of the Trustees - this will ensure that the membership retains control of the direction of its Institution; and
- elect members of the Council (currently three) to the NomCo.

11.1.4 This provides a combination of:

- a Trustee Board which is responsible for governance decisions, where the board and individual trustees take collective responsibility; and
- a Council whose main role is advisory, debating the issues for civil engineering and the profession, tendering advice and representing to the views of the membership to the Trustee Board, with some approval powers.

11.1.5 It is a combination with the potential to provide strong and effective governance. However, it requires the roles and responsibilities to be crystal clear to avoid any potential misunderstanding. The two areas where difficulties could arise are:

- if the Council tries to use its approval powers to micro-manage the activities of the Trustee Board (which would undermine the legal responsibility of the Trustee Board and adversely impact its effectiveness), rather than considering things at a strategic level; or
- if the Trustee Board fails to recognise the value of the Council's advice and member representation, or to nurture strong engagement with it.

11.1.6 It is also important to remember the role of the Audit Committee which, with its combination of members drawn from the Council as well as independents, is the appropriate body to monitor the Trustee Board's work in terms of finance, business planning and risk. In this, the Audit Committee is supported by the ICE's independent auditors.

11.1.7 The Commission's considerations recognise the important principles set out above.

11.2 Strengthening the Role of Council

11.2.1 During the Stage 1 consultation, the Commission heard of the Council's success in fulfilling the role of debating, and advising on, significant issues facing civil engineering, the profession and society. We also heard from some who preferred to serve as part of a mainly advisory Council, influencing the strategic issues of importance to civil engineering and society without the responsibility of trustee duties and obligations.

11.2.2 Conversely, some concern was expressed that the Council would become a 'talking shop', with reduced influence, which could make it unattractive to prospective Council members.

11.2.3 There may well be scope to strengthen the role of the Council. However, that must not undermine the key principle that it is the Trustee Board which has ultimate control and responsibility for the governance of the Institution, with trustees having legal responsibilities in that regard. Strategic decisions and direction, including those which impact on the Institution's financial position, can only be made in one place – the Trustee Board.

11.2.4 While respecting that principle, the Commission believes it should be possible to strengthen the role of the Council without interfering with the Trustee Board's responsibilities, as set out in the following sections.

11.3 Council as the Pinnacle of the Learning Society

11.3.1 According to the Trustee Board's Terms of Reference, all of ICE's committees, panels and sub-committees are directed, monitored and co-ordinated by the Trustee Board (although in practice there are principal committees with a hierarchy of subsidiary committees and panels).

11.3.2 However, given that the Council's key purpose is to debate issues of strategic importance to civil engineering, the Institution and society, and to understand and recognise the implications of the changing nature of civil engineering, it seems strange that it does not have a direct link to the Learning Society Committee.

11.3.3 Indeed, the Council should be regarded as the pinnacle of the Learning Society.

11.3.4 It is therefore proposed that:

- the Learning Society Committee and its Community of Practice Panels (Knowledge Panels, Expert Panels and Editorial Advisory Panels) should report through the Council; and
- the Vice-President / Trustee - Learning Society becomes a member of the Council as well as being a trustee.

This must be without prejudice to the fact that the Trustee Board is responsible for approving and monitoring the ICE Plan and Budget.

11.4 Vice President for the Council

11.4.1 It is vitally important that the Council is not relegated to become a talking shop. It represents the geographical and grade mix of the ICE membership and has an important and valuable advisory role which should be respected.

11.4.2 It is proposed that one of the trustees should be Vice President / Trustee for the Council, with a portfolio to promote constructive and effective working relationships between the Council and the Trustee Board.

11.4.3 That individual would take a special interest in representing the views of Council at the Trustee Board, but without prejudice to the principles that decision-making rests with the Trustee Board and that the board and individual trustees must take collective responsibility for those decisions. The individual would also represent the views and decisions of the Trustee Board to the Council.

11.4.4 If, in future arrangements, the President still chairs the Council, the Vice President / Trustee for the Council would also act as Vice Chair of the Council, taking the chair when any matter is being discussed which might present a conflict of interest for the President.

11.5 Requirement to Consult

11.5.1 The Council's Terms of Reference allow it to tender advice to the Trustee Board concerning the conduct of the ICE's affairs generally, including its direction and strategy, and on any other matters referred to it by the Trustee Board. However, there is no requirement in the Trustee Board's Terms of Reference to consult the Council, apart from consulting it about any changes to the Council Constitution and Terms of Reference (By-Law 57(2)).

11.5.2 It is therefore proposed that the Terms of Reference of both the Trustee Board and the Council should include a requirement for the Trustee Board to consult Council on a limited number of matters of particular significance such as:

- significant change to the Institution's vision and strategic direction¹⁶;
- governance changes including changes to the By-Laws or the Terms of Reference of the Council, Trustee Board, NomCo or the President;

¹⁶ The Commission commends the current practice where the Trustee Board and the Council attend a Joint Annual Strategy Meeting to discuss vision and strategic direction. This is good practice and we recommend it continues.

- changes to the Trustee Board Terms of Reference;
- changes to the Disciplinary Regulations¹⁷;
- changes to the Admission Regulations¹⁷;
- significant structural change to UK Regions or International Areas; and
- the Trustee Board's annual report to Council on the ICE Budget and Plan.

11.5.3 It is also proposed that the Terms of Reference of the Trustee Board should require it to provide a reasoned explanation to the Council if, on any occasion, it declines to accept the Council's advice on any significant point. Such a provision will avoid any perception that the Council can lightly be ignored.

11.5.4 Both of these requirements must be carefully calibrated to avoid interfering with the Trustee Board's legal responsibilities, business-as-usual, or introducing unnecessary delay in decision-making.

11.5.5 However, they will, in combination, provide a more graduated and nuanced approach to the Council's oversight role than the current option of declining to re-appoint trustees (which, due to its gravity, is unlikely to be used except in extremis).

11.5.6 Accordingly the Commission makes the following interim recommendation:

Interim Finding 12

The Commission **recommends** the following methods of strengthening the role of Council (without interfering with the Trustee Board's responsibilities, including the Board's ownership of the ICE Plan and Budget):

- the Council should be recognised as the pinnacle of the Institution's Learning Society, with the Learning Society Committee and its Panels reporting through the Council, and the Vice- President Learning Society becoming a member of the Council as well as the Trustee Board;
- there should be a trustee who is Vice President / Trustee for the Council, who will also act as Vice-Chair of the Council;
- the Terms of Reference of both the Trustee Board and the Council should include a requirement for the Trustee Board to consult Council on defined matters of particular significance; and
- the Trustee Board must provide a reasoned explanation to the Council on each occasion when it declines to accept the Council's advice on any significant point.

¹⁷ The By-Laws give the Trustee Board power to make or amend: Regulations (such as Admission Regulations or Disciplinary Regulations - see By-Law 53); Rules (By-Law 54); and Terms of Reference (By-Law 55). The governance arrangements introduced in November 2018 provide that some matters which were previously in the By-Laws are now included in those Regulations. This change was made on the advice of the Engineering Council.

11.6 Ethics and Conduct

- 11.6.1 During the Stage 1 consultation and in an evidence session, an ICE member made pertinent points about the importance of all ICE members acting in accordance with the ICE Code of Professional Conduct. He pointed out there is a duty on members of the ICE to behave ethically, to do the right thing, to be truthful and honest and to act with probity and good faith.
- 11.6.2 Therefore, the Trustee Board's Terms of Reference rightly make it explicit that trustees must act ethically at all times.
- 11.6.3 Traditionally, the Senior Vice President has held the portfolio for Ethics and Professional Conduct. Given the other heavy demands on the Senior Vice President's time, including preparing for the Presidential year, the Commission believes it would increase the profile of Ethics and Professional Conduct if it was a dedicated portfolio for another trustee (ie not bundled with another portfolio). The Vice President / Trustee for Professional Conduct would attend the Professional Conduct Panel and chair the Ethics Committee.
- 11.6.4 Most Trustee bodies have the power to dismiss a trustee for reasons such as persistent non-attendance or gross misconduct. This does not seem to be a power available to the Trustee Board under By-Law 41¹⁸ or its Terms of Reference.
- 11.6.5 Accordingly the Commission makes the following interim recommendations:

Interim Finding 13

The Commission **recommends** that one of the trustees should lead Ethics and Professional Conduct as a dedicated and exclusive portfolio.

The Commission **recommends** the Trustee Board should have the power to remove a trustee for justifiable reasons and following due process.

11.7 Composition of Council

- 11.7.1 In the Stage 1 consultation, one of the UK Regions raised the point that the composition of the new Council is no longer stated in the By-Laws, but is instead set out in the Council Constitution and Terms of Reference. While that document includes the provision that the Council must include a representative from each UK Region, the concern was expressed that this could change in future if the Trustee Board so decided.
- 11.7.2 The Commission has reviewed this matter and understands that the removal of the Council composition from By-Laws to Terms of Reference was the result of advice from the Engineering Council (one of ICE's regulators) to streamline the By-Laws as much as possible. The Engineering Council repeated this point in a letter to the Commission, saying 'we would also look at the balance of detail between the By-Laws and the Regulations to ensure the bureaucratic workload of amending the By-Laws is reduced'.

¹⁸ By-Law 41: The office of a member of the Trustee Board shall be vacated if the Corporate Members in General Meeting so resolve, or if notice is given in writing to the Trustee Board of the Trustee Board member's wish to resign and the Trustee Board accepts this resignation, or if the Trustee Board Member ceases to be a member of the Institution; it shall also be vacated if the Trustee Board member becomes bankrupt or of unsound mind and the Trustee Board resolve that it be vacated. Any such resolution shall be conclusive as to the fact and grounds of vacation stated in the notice.

11.7.3 There are no current proposals to change the composition of the Council and the Commission believes there are two safeguards if a future change was to be contemplated:

- the Trustee Board is obliged by By-Law 57(2) to consult the Council on any change to the Council's Terms of Reference (and must take that advice into account, although not obliged to accept it); and
- any change in the composition of the Council, contrary to the advice of the Council, would almost certainly result in the calling of an SGM, with a high likelihood of the motion being carried.

11.7.4 Accordingly, the Commission makes no recommendation for change in this regard.



12. Transparency and Engagement

12.1 Background

- 12.1.1 In section 4.1, we reported that one of the key themes emerging from the consultation is the perception, and in some cases the strong perception, that ICE's governance arrangements have become remote from, and lack accountability to, ICE members.
- 12.1.2 Whether this is a perception or reality does not really matter; perception can be just as powerful.
- 12.1.3 The Commission believes this is a significant issue which must be addressed by the Trustee Board and the Council. We are confident that our recommendations will go a long way to addressing these perceptions. But there are two other essential tools that will have a significant impact in ensuring that ICE's governance is accountable and accessible to the membership - transparency and engagement.

12.2 Transparency

- 12.2.1 Transparency and openness are vital elements in building confidence in the Institution's governance.
- 12.2.2 The Commission suggests the following, relatively straightforward, ways of improving transparency through additional publication in the relevant section of the ICE website:
- Publish a plain English guide to ICE's governance arrangements, along the lines set out by the Commission in Annex C. There is already a link to the Charter and By-Laws, but these are necessarily framed in legal language and are not easily understood.
 - Publish the Trustee Board Terms of Reference and the Council Constitution and Terms of Reference.
 - Publish the excellent and comprehensive 'Governance Handbook' produced by ICE's Governance Office as an induction guide to new trustees. This sets out how the Trustee Board and Council work, the duties of a Trustee, the principal Committees, the senior staff and the staff organisation, the ICE Vision, Values and Plan and much more.
 - The Commission endorses the current practice of promptly publishing a Trustee Board update shortly after each meeting as well as minutes of Council meetings (once confirmed). However, the Trustee Board minutes do not appear to be published and it would be helpful to do so once they are confirmed. Obviously, in keeping with normal practice any sensitive items should be withheld (for example commercial, staffing matters etc.)
 - Publish details of how an ICE member may apply to attend a Council meeting as an observer.
 - Publish and keep up to date the President's calendar (past and forthcoming principal events) so that members may be aware of the President's considerable activities.

- Publish an annual Transparency Report to ensure members and others are aware of significant developments during the course of the year. This may be part of the Annual Report and could include the NomCo report as recommended in Interim Finding 7 (para 8.3.6). These are encouraged by the Charity Commission, particularly in relation to public benefit.

12.2.3 Accordingly the Commission makes the following interim recommendation:

Interim Finding 14

The Commission **recommends** that the Trustee Board and Council consider improving transparency as suggested in this section.

12.3 Engagement

12.3.1 One of the key tasks of a trustee board is to understand both the internal and external environment.

12.3.2 Many boards do this by undertaking targeted visits, and there is no doubt that the ICE President, Senior Vice President and the Director General and Secretary undertake many such visits through the UK and internationally.

12.3.3 Another means for boards to understand the environment is to invite particular groups to present on key issues at board meetings. The Commission believes it is particularly important for the Board to hear from aspiring members (Graduate and Student members) and we believe the Trustee Board should discuss with GSNet the possibility of an aspiring member attending board meetings as an observer, or non-voting participant.

12.3.4 Accordingly the Commission makes the following interim recommendation:

Interim Finding 15

The Commission **recommends** that the Trustee Board considers a programme of inviting particular groups to present to it, in order to understand the internal and external environment, and the Trustee Board should discuss with GSNet the possibility of an aspiring member attending board meetings as an observer, or non-voting participant, on a regular basis.

12.3.5 The Commission shares the concern of some members who responded to the Stage 1 consultation about the low level of engagement in the 2018 governance vote (9%) and, similarly in Council elections (2016: 7.5%, 2017: 8.9%, 2018: 9.2%; and 2019 9.1%).

12.3.6 It is a paradox that, in a membership organisation, less than 10% of eligible members vote on important governance matters. This is not healthy.

12.3.7 The Commission recommends that the Trustee Board and Council examine this issue in depth, benchmarking with comparator bodies, seeking out the root cause through member engagement surveys and taking the advice of specialists such as the Electoral Reform Society. All with the purpose of improving member engagement in key governance votes.

12.3.8 Accordingly the Commission makes the following interim recommendation:

Interim Finding 16

The Commission **recommends** that the Trustee Board and Council examine in depth the low turnout in ICE governance votes and elections, benchmarking with comparator bodies, seeking out the root cause through member engagement surveys and taking the advice of specialists such as the Electoral Reform Society; all with the purpose of improving member engagement in key governance votes.



13. Special General Meetings

13.1 Background

13.1.1 The Commission's Terms of Reference require us to consider how SGMs can be more accessible to voting members.

13.1.2 Currently, the ICE By-Laws require that:

- the Trustee Board must call an SGM upon a requisition in writing of 60 Corporate Members (By-Law 68);
- 14 clear days' notice of the SGM must be sent to each ICE member on the roll, but only Voting Members shall be entitled to vote at a Special General Meeting (By-Law 69);
- a quorum of 150 Corporate Members must be present at the meeting within 20 minutes of the appointed time (By-Law 83); and
- votes at an SGM may only be cast in person at the meeting¹⁹.

13.2 Number of Requisitioners

13.2.1 The By-Laws provide that the Trustee Board must call an SGM upon a requisition in writing of 60 Corporate Members (By-Law 68).

13.2.2 This is largely in line with the 50 or 60 required by four of the comparator bodies (IChemE, IET, IMechE and RTPI). The rest of the comparators have a higher threshold: 100 (CIHT) and 250 (IStructE and CIWEM). Some comparators use a percentage (sometimes in combination with an absolute number in which case the lower number applies): 1% (RIBA); 2% IStructE; and 10% (CIHT and RAEng).

13.2.3 While the ICE threshold is at the lower end of the range (particularly since it has the second highest number of members) it is likely that any proposal to increase the number of requisitioners will be seen as an attempt to stifle challenge.

13.2.4 Calls for an SGM are rare. Last year's SGM has been the only one called in the last 40 years, and that was because of genuine concerns.

13.2.5 Accordingly, the Commission makes the following interim recommendation:

Interim Finding 17

The Commission **recommends** there should be no change to the number of members required to requisition an SGM but, in the event there are repeated or vexatious calls for SGMs, the Trustee Board should reconsider the matter.

¹⁹

- By-Law 69 provides that only Voting Members shall be entitled to vote at a Special General Meeting (ie it envisages voting **at** an SGM)
- By-Law 84 provides that at all meetings of the Institution (and By-Law 66(2) defines SGMs as such a meeting) questions shall be decided according to the majority of votes properly given **thereat** (ie voting must be at the meeting)
- By-Laws 74 and 75 provide for electronic voting, but this is only in respect of votes permitted by By-Laws 5, 14, 53, 71, 72 or 73, which do not cover voting at an SGM.

13.3 Speaking at an SGM

- 13.3.1 The Commission heard from a Graduate Member who, while realising he could not vote, wished to contribute to the debate at the SGM but was challenged by another member.
- 13.3.2 By-Law 69 provides that 14 clear days' notice of the SGM must be sent to **each** ICE member on the roll, but only Voting Members shall be entitled to vote at a Special General Meeting. By-Law 78 provides that each member of whatever grade shall have the privilege of introducing strangers to be present at Ordinary and other meetings of the Institution, subject to such detailed provisos as may be laid down by the Trustee Board.
- 13.3.3 These By-Laws imply that ICE members who are not Voting Members may attend the SGM, but they are silent on whether or not they may speak at the meeting.
- 13.3.4 Accordingly, the Commission makes the following interim recommendation:

Interim Finding 18

The Commission **recommends** that the By-Laws are amended to make clear that non-Voting Members may make an oral contribution at an SGM.

13.4 Voting at an SGM

- 13.4.1 The By-Laws provide that votes at an SGM may only be cast in person at the meeting ^{see earlier footnote 19}.
- 13.4.2 This is manifestly unfair to members who are unable to travel to attend the SGM in person. It is not appropriate for a global membership organisation. There is a clear need to provide for electronic voting.
- 13.4.3 Four of the comparator bodies allow electronic voting for voting members unable to attend an SGM (ICChemE, IMechE, RIBA and RAEng).
- 13.4.4 Accordingly, the Commission makes the following interim recommendation:

Interim Finding 19

The Commission **recommends** that the By-Laws are amended to permit electronic voting for voting members unable to attend an SGM.

14. Conclusion of the Interim Report and Next Steps

- 14.1 During Stage 1 of its work, the Commission gathered significant background information and evidence. The Commission:
- consulted widely through open evidence sessions, by seeking the views of ICE members, in facilitated workshops with most of the main ICE boards and committees, and by seeking the views of the ICE's 15 Specialist Knowledge Societies;
 - heard a wide range of opinion about the key principles and issues for good trustee governance and the Institution's current governance arrangements;
 - made a detailed study of the governance arrangements of nine comparator bodies in engineering and the built environment; and
 - took advice from specialists in trustee governance.
- 14.2 We are most grateful for all who assisted us so constructively.
- 14.3 These consultations were most valuable in helping us to determine the scope of the key issues to be addressed and to understand the wide range of views, sometimes opposing views, on those issues.
- 14.4 In Stage 2, the Commission considered the issues in good faith, with an open mind and from first principles, and we have set out our analysis and interim findings in some depth in this Interim Report. The report and its 19 Interim Findings have been unanimously endorsed by the Commission.
- 14.5 We believe we have fully covered the matters set out in our Terms of Reference.
- 14.6 In Stage 3, the Commission will again consult widely: with the ICE membership; with the Trustee Board, Council and ICE's principal Boards and Committees; and with the Specialist Knowledge Societies. We shall warmly welcome comments on this Interim Report – all will be considered and taken into account as the Commission develops its final report to the ICE Trustee Board and Council. This will be published in December 2019.
- 14.7 Once the Final Report has been delivered the work of the Commission will be complete. It will then be for the Council and Trustee Board to consider the recommendations, and for the Council to advise and the Trustee Board to decide upon any governance changes required as a result. Some changes may be implemented immediately, while others may require a ballot of the voting members to change By-Laws. The Commission will recommend that the Trustee Board communicates clearly with the membership in advance of formally initiating any such changes.

Terms of Reference

approved by ICE Council – 11 December 2018

Purpose/tasks

To undertake a review of the governance of the Institution in order to ensure ICE delivers its Royal Charter objects as effectively as possible.

1. The Commission shall:
 - a. consult widely within the Institution as to what our members expect in relation to the principles of Institution governance and the options for the governance models - the Commission should seek the views of the full spectrum of the membership;
 - b. take account of the views of ICE UK regions and international associations;
 - c. take account of the guidance from the Charity Commission and Engineering Council;
 - d. take account of the governance arrangements in similar bodies;
 - e. consider how the Institution's governance arrangements can help it to seize opportunities and manage risk in a rapidly changing environment, both now and in the future;
 - f. consider how to make Special General Meetings more accessible to ICE voting members;
 - g. consider means to identify and nominate the best candidates for the ICE President and Vice-President;
 - h. consider options for appropriate governance of the Institution, setting out those emerging options to the Council and Trustee Board during 2019; and,
 - i. having regard to Council's views and member consultation, make a recommendation to the ICE Council and Trustee Board.

2. The Commission shall:
 - a. *Unless the person giving evidence objects*, hold open evidence sessions at which ICE members will be welcome to attend as *observers only and with no speaking rights*;
 - b. Hold closed sessions for other Commission business and discussion;
 - c. Publish minutes of Commission meetings once approved by the Chair.

3. The ICE Council directs:
 - a. That there be a portal on the ICE website where the Commission can publish ToR, Membership of the Commission, notice of open meetings, background information, evidence papers, confirmed minutes of meetings and interim and final reports;
 - b. That the Commission ensure that ICE members are able to submit their views to the Commission. The Council accepts this would be through the website;
 - c. And that coupled with the above, the Commission will be inclusive, will consult widely with the ICE membership and principal ICE boards – both on the principles of good governance and on its emerging findings; and will be transparent in reporting the outcome of its considerations and how the Commission has weighed the evidence put before it.

Composition of Commission

4. Candidates selected for appointment as members of the Commission should reflect the diverse nature of the Institution. These appointments will be unremunerated although reasonable travelling and subsistence expenses will be reimbursed. The Commission may also draw on external advisors (including a Commission Secretary) as it sees fit within the budget authorised by the Institution.

Timescales

5. The Commission is to be undertaken to the following timescales:
 - a. propose to the President any amendment to these terms of reference and proposed appointees by 14 November 2018;
 - b. present these terms of reference and proposed appointees to the Commission for discussion and confirmation by the Council and Trustee Board in December 2018;
 - c. bring emerging findings to the Council and Trustee Board by July 2019;
 - d. make a final report and recommendations to the Council and Trustee Board by December 2019.



Membership of the Commission

Member	Current and Previous Positions
<p>David Orr (Chair) CBE, FREng, Hon DSc, FICE</p>	<p>Chair, Independent Assurance Panel, HS2 Strategic Adviser, Houses of Parliament Director, Candid Insight Ltd <i>formerly:</i> President of the Institution of Civil Engineers 07-08 Senior Civil Servant External Board Member, Houses of Parliament Chair, Crossrail Procurement Expert Panel</p>
<p>Kris Barnett BA (Hons)</p>	<p>Chief Executive Officer, ICE Benevolent Fund Trustee and Board Member, Association of Charitable Organisations <i>formerly:</i> Director, Investment Property Forum</p>
<p>Simone Bertram MSc, BSc, GMICE</p>	<p>Assistant Geotechnical Engineer, Atkins Chair, GSNet 17–18 <i>formerly:</i> Design Engineer, Vp plc Geotechnical Graduate Engineer, Leeds City Council</p>
<p>Richard Fish BSc CEng FICE FStructE FCIHT MIAM FRSA</p>	<p>Director, Richard Fish Consultancy Ltd Independent Consultant on Bridge Asset Management Technical Secretary, Bridge Owners Forum Chair, ICE Audit Committee Chair, ICE South West Region <i>formerly:</i> Member of Council, Institution of Civil Engineers 09-15 Director of Planning, Transportation and Estates, Cornwall County Council 01-09</p>
<p>Philip Greenish CBE HonFREng BSc CEng FIET</p>	<p>Chair of Council, University of Southampton <i>Formerly:</i> Chief Executive, The Royal Academy of Engineering Rear Admiral, The Royal Navy Founding Trustee, Science Media Centre Trustee, Daphne Jackson Trust Trustee, EngineeringUK Council Member, Science and Technology Facilities Council Council Member, Council for the Central Laboratory of the Research Councils</p>
<p>Claire Oliver BE (Hons), CEng, MICE</p>	<p>Principal Consultant at Wood E&IS ICE Council Member - London Region Member, ICE Health and Safety Expert Panel <i>formerly:</i> Member, ICE Qualifications Panel</p>

<p>David Porter CEng, BEng, MSc, FICE</p>	<p>Divisional Roads Manager, NI Dept for Infrastructure Member of Industrial Liaison Panel, Ulster University Vice Chair of Qualifications Panel, Institution of Civil Engineers Member of Audit Committee, Institution of Civil Engineers <i>formerly:</i> Member of Council, Institution of Civil Engineers Member of Executive Board, Institution of Civil Engineers Chief Executive, Rivers Agency</p>
<p>Paul Sheffield CBE, BSc, CEng, FICE</p>	<p>Senior Vice-President, Institution of Civil Engineers Supervisory Board Member, Royal BAM Group Senior Non-Executive Director, Southern Water Industry Adviser, Board of Manchester Airport Group <i>formerly:</i> CEO, Keir Group Managing Director, Laing O'Rourke - Europe, Canada and the Middle East</p>
<p>James Stewart OBE, FICE</p>	<p>Vice Chair, KPMG UK (Industrial Strategy, Geo-politics, Brexit) Chair, Advisory Board, UNECE PPP Centre of Excellence Board Member, Infrastructure Exports: UK Co-chair, Brazil/UK Infrastructure Taskforce <i>formerly:</i> Chair, KPMG's Global Infrastructure Practice Non-Executive Director, Sport England CEO, Infrastructure UK CEO, Partnerships UK Head of Project Finance, SG Hambros</p>
<p>Prof Jean Venables CBE, FEng, Hon DSc, FICE, FCGI</p>	<p>Director, Venables Consultancy Visiting Lecturer, Coventry University Council Member, and Technical Committee member, RNLI Member, Anglian (Central) RFCC Vice President, WFEO and Chair, Engineering & Environment Committee Member, International Committee, RAcadE Trustee, Panasonic Trust, RAcadE President, IESF Vice President, the Association of Drainage Authorities <i>formerly</i> President of the Institution of Civil Engineers 08-09 Chair, Thames Regional Flood Defence Committee, Chief Executive, the Association of Drainage Authorities Visiting Professorships</p>
<p>Executive Secretary: D'Arcy Myers</p>	<p>Principal – Consultdarcy Ltd Vice- Chair of The Association of Charitable Organisations</p>

ICE Governance Arrangements

Current Arrangements

1. The ICE's current governance structure was introduced in November 2018. It is set out in the Royal Charter and the By-Laws of the Institution. The Royal Charter provides that changes to the By-Laws may be made by a resolution passed by not less than two-thirds of the corporate members voting thereon, subject to the approval of the Privy Council.
2. The By-Laws give the Trustee Board power to make or amend: Regulations (such as Admission Regulations or Disciplinary Regulations - see By-Law 53); Rules (By-Law 54); and Terms of Reference (By-Law 55). The governance arrangements introduced in November 2018 provide that some matters which were previously in the By-Laws are now included in those Regulations.

Trustee Board

3. Under the governance structure introduced in November 2018, 12 trustees of the Institution comprise a Trustee Board, which is responsible for the leadership and management of the Institution.
4. According to its Terms of Reference, the Trustee Board has responsibility to:
 - ensure that ICE pursues its activities in accordance with its Royal Charter and By-Laws;
 - maintain the reputation of the Institution;
 - ensure that ICE complies with all relevant legislation and with the regulation and guidance of the Charity Regulators;
 - act in the best interests of the Institution as a whole, not on behalf of any one grouping or constituency;
 - set the vision and strategy for the Institution;
 - direct the activities of the Institution;
 - approve the ICE Plan and budget for the delivery of the Institution's objectives;
 - ensure effective delegation, control and risk assessment and management systems are set up and monitored;
 - direct, monitor and coordinate the activities of committees, panels and sub-committees to which it has delegated authority;
 - ensure that the Institution complies with the requirements of the UK Engineering Council;
 - appoint, remove and direct, the Director General & Secretary;
 - act ethically at all times; and
 - not benefit from their position beyond that which is allowed by the law and is in the interests of the Institution.

5. The 12-strong Trustee Board comprises:

President	1	(Chair) (recommended by TB and approved by the Council ²⁰)
Senior Vice-President	1	(recommended by TB and approved by the Council ²⁰)
Other Vice-Presidents	6	(min 2, max 6) (recommended by TB and approved by the Council ²⁰)
Council Members	3	(elected by Council)
Member	1	(recommended by TB and approved by the Council ²⁰)

6. The change in the composition of the Trustee Board compared to the previous Executive Board is that it has 3 Council Members instead of 5, but also an Institution member recommended by the Trustee Board and approved by the Council²¹.
7. All trustees must be members of the Institution. By-law 29 provides that no employee of the Institution may serve as a member of the Trustee Board.
8. With the exception of the President and succeeding Vice Presidents, trustees are appointed for a three-year term. Trustees may serve a second consecutive term. There must then be a break of at least one year before a trustee may be appointed to serve a third term. No trustee shall serve more than nine years on the Trustee Board. These periods are not specified in the By-laws, but in the Trustee Board's Terms of Reference which are promulgated by the Trustee Board. The President may have a term of five years to enable that individual to act as a Succeeding Vice President, Senior Vice President and then President.
9. The members of the Trustee Board must be approved by the Council annually. These provisions are included in the Council Constitution and Terms of Reference and Trustee Board Terms of Reference, both of which are referred to in By-law 40.
10. The Trustee Board shall meet no fewer than five times per year.
11. A Nomination Committee is established by, and reports to, the Trustee Board (see footnote 20). Under Terms of Reference approved by the Board it comprises six to ten members of the Institution as follows:
- A Past-President of the Institution (Chair)
 - President (ex-officio)
 - Senior Vice President (ex-officio)
 - at least three members of the Council elected by the Council;
 - other members appointed by the Trustee Board on the advice of the Chair of the Nomination Committee.
 - The Nomination Committee shall be quorate if over half of its members are present including the President of the Institution.

²⁰ In practice, a Nomination Committee (see para 10) makes a recommendation to the Trustee Board. If accepted, the Trustee Board then recommends the candidate to the Council. If the Council approves, the candidate is appointed. If the Council does not approve the candidate, the Nomination Committee / Trustee Board may recommend another candidate and this process continues until a candidate is approved by the Council.

²¹ A transitional arrangement applies for the first year, where the four other members are all Council members nominated by the Council.

The Council

12. The Council comprises 38 members and operates as a largely advisory, strategic body. Its function is to support the Trustee Board through that advice, as well as scrutinising the performance of the Trustee Board and providing a forum for relevant debate considering the issues facing modern civil engineering professionals, now and in the future.
13. The duties of the Council are to:
- meet regularly to debate issues of relevance to civil engineering, the Institution and society, to understand and recognise the implications of the changing nature of civil engineering and to support the Trustees in ensuring ICE is considered a global centre of excellence championing the role Civil Engineering plays at the heart of Society;
 - approve, or not approve, annually, the appointment of the Trustees - this will ensure that the membership retains control of the direction of its Institution;
 - directly appoint three members of Council to the Trustee Board -this will allow Council to appoint a Council member every year for a three-year term thereby ensuring continuity;
 - exceptionally, appoint two individuals to the Trustee Board for the session starting in November 2018 as part of the transition process - to ensure continuity one of these appointments shall be for two years, one for three years;
 - directly appoint three members of Council to serve on the Nomination Committee²².
 - tender advice to the Trustee Board concerning the conduct of the ICE's affairs generally, including its direction and strategy, and on any other matters referred to it by the Trustee Board;
 - communicate views that are representative of the range of views of members of the ICE on these and other matters to the Trustee Board;
 - monitor the governance of the ICE and promote a culture of continuous improvement.
14. The Council comprises:
- | | | |
|--------------------------|----|--|
| President | 1 | (recommended by TB and approved by Council ²⁰) |
| Senior Vice-President | 1 | (recommended by TB and approved by Council ²⁰) |
| Immediate Past President | 1 | (ex-officio) |
| General Council Members | 15 | (elected by voting members - see footnote ²³) |
| UK Regional Members | 12 | (elected by voting members in the Region) |
| International Members | 5 | (elected by voting members in the International Area) |
| Graduates | 3 | (elected by Graduate members) |
15. The Chair of GSNet is a non-voting participant in Council meetings.
16. The change in composition compared to the previous Council is that it no longer includes the Vice-Presidents, however they are welcome to attend if the debate covers their area, but this would be as non-voting members.

²² To serve on the Nomination Committee those members appointed by Council must be Council members. A Council appointed member of the Nomination Committee shall be required to step down from the Nomination Committee when they are no longer a member of Council.

17. The composition of the Council is no longer prescribed in the By-Laws, but in a new document 'Constitution and Terms of Reference of Council' which is promulgated by the Trustee Board after consulting the Council. During consultation on the proposed governance changes, the Engineering Council advised strongly that the Institution should streamline its By-laws. This involved removing the more procedural items from the By-Laws and into Regulations.

Previous Governance Arrangements

18. The ICE's previous governance structure had been in place, largely unchanged, since November 2007 until they were superseded in November 2018.

19. In the previous arrangements the Council was the Trustee body of the Institution, meeting 4 times a year (including the Annual Strategy Meeting). It comprised 44 members made up of:

President	1	(elected by Council)
Past-President	1	(ex officio)
Vice-Presidents	7	(min 3, max 7, inc SVP – elected by Council)
General Council Members	15	(elected by voting members - see footnote ²³)
UK Regional Members	12	(elected by voting members in the Region)
International Members	5	(elected by voting members in the International Area)
Graduate Members	3	(elected by Graduate members)

20. The Chair of GS Net was a non-voting participant in Council meetings.

21. In addition, there was an Executive Board to manage, in more detail, the Institution's affairs and to implement the Council decisions, operating always under the authority of the Council (as Trustees).

22. The Executive Board was not prescribed in the By-Laws but operated in accordance with Terms of Reference. There were 13 members comprising:

President	1	
Senior Vice-President	1	(Chair)
Other Vice-Presidents	6	(min 2, max 6)
General Council Members	5	(elected by Council)

²³ The 15 general Council members included at least 1 of each of the following grades: Fellow or Honorary Fellow who are Corporate Members, Member (CEng), Member (IEng) and Technician (EngTech).

History of ICE Governance

- 1818 First meeting of ICE setting out the original rules
- 1825 4 vice presidents. Council = 7 elected members
- 1828 Royal charter granted
- 1837 Council = president 4 VP's 10 others (8 members 2 associates)
Introduction of graduates
Corresponding members merged with members
Associate = non practitioner of civil engineering though associated with it.
- 1845 Rennie President. Council consisted of 4VP 10 members 2 associates. SGM convened to change from single name nomination for president and to last no longer than 3 years.
- 1845 Class of 'Associate' redefined as 'not necessarily engineers' No member to hold position on council for more than 2 years or be re-elected for 3. President to be elected from VP since they would be conversant with the duties of the president
- 1846 Nominations for council extended to include non-residents i.e. outside of London this was in light of the growth of the railway network.
- 1849 At AGM Proposal to make all Past Presidents non-voting honorary members of council passed
- 1854 Attempt to get 3 specifically elected non-resident members elected to council failed
- 1871 SGM Other members on council increased to 15 from 12 to be non-residents and not associates was successful, though a proposal to rotate the longer serving more senior members of council failed
- 1880 Introduction of the 1-year presidential term
- 1885 At SGM date of AGM changed to last Tuesday in May
- 1896 Corporate members 6030
2nd supplemental charter granted
This allowed not less than 22 people excluding the president and 4 VP's.
Past president could be appointed to council not more than 4 to be included in the total
Introduction of postal voting
- 1897 First overseas member elected to Council
- 1898 Agreement that although elected in May the new president and council would not take office until the start of the next session in November
- 1922 Rejection by Council of proposal to form Associate Members committee
- 1923 3rd supplemental charter. Establishes 'chartered civil engineer'
Postal ballot voting and proxy voting for presidential election VP and members of council.
- 1934 Local Association committee, which reported to Council, doubled in size with the introduction of a second member for each Local Association.

- 1935 Revision of by laws
- i) extension of the scope of the rules of professional conduct
 - ii) broadening of age limit for students (17-28 instead of 18-26)
 - iii) amplification of qualification for corporate membership
 - iv) time limit for service on council
- 1948 4 more member elected to council
- dominions and colonies
- 1 rep from each local association =10
- 3 associate members
- and any 10 corporate members
- No member could support more than 1 candidate
- 1948 By laws changed and council was enlarged 3 places for Associates members
- 1948 Local Association Committee disbanded and Local Association representatives (Territorial members) introduced to council along with 10 overseas members.
- 1962 Fourth supplemental charter
- Remove the restriction of amount of value of property held
- Increase number of VP's to 5
- Members of council resident overseas increased from 10 to 11
- Local Associations representatives increased from 11 to 12
- Members of council to be prescribed by the by laws
- Voting arrangements clarified to ensure general meeting held after a postal ballot.
- Provision made for future changes, obviated the need for further supplemental chapters.
- 1970 Report of the committee on the constitution and business of the council
- Recommended a council of 50
- President, 2 past presidents, 3 VP's, 18 fellows, 9 members, 14 territorials (12 LA's 1 London, 1 Home Counties) and chairmen of standing committees
- No provision for overseas
- No Associate members since not considered under the charter as 'one body, politic and corporate'
- Council service to be extended to 3 years, 1/3 elected each year by annual ballot
- Single transferable vote system adopted
- 1971 Changes approved by ballot
- 1971 23. Overseas representatives and all chairman of advisory committee to become 'corresponding members'
- 1972 Adopted by council
- 1975 New charter
- New object 'to foster and promote the art and science of civil engineering
- 1981 Amendments to the Royal Charter were approved (details not known)
- 1982 Amendments to the Royal Charter were approved (details not known)

- 1984 The Institution of Municipal Engineers was merged with the Institution of Civil Engineers. An Association of Municipal Engineers was formed as a sub-division of the Institution of Civil Engineers under its Charter and under the By-laws as amended at that date. Approved by the Privy Council in February of that year.
- 1989 The Society of Civil Engineering Technicians was merged with the Institution of Civil Engineers, formalised by the Privy Council in December of that year.
- 1991 Following a ballot of corporate members, a new membership grade of Affiliate was introduced.
- 1994 The Institution of Works and Highways Management was merged with the Institution of Civil Engineers, merger agreed by the Privy Council in February of that year.
- 2000 The Institution's By-laws were extensively amended and renumbered to take account of the findings of the Future Framework Presidential Commission in 1997, and to comply with modern practice. The changes were formalised by the Privy Council in February of that year.
- 2001 The Charter and By-Laws were amended to grant corporate membership to Associate Members, with full voting rights and the eligibility for election as Vice President, to grant limited voting rights to Technician Members and to allow the election of two Graduate members to the Council. Size of Council 54 members. The changes were formalised by the Privy Council in June of that year.
- 2002 Review of ICE Governance in 2002
- no change to the size of Council
 - increased number of members elected by Council to the Executive Board
- 2006 Review of ICE Governance 2006 – implemented by ballot 2007
- Chair: David Orr
- Council to reduce from 54 to 44 members
 - maximum of 9 in Presidential Team
 - 14 Regional Members
 - 4 International Members
 - 2 Graduates
 - chair of GSNC to be a non-voting participant
 - no change to Executive Board
- 2011 Review of ICE Governance 2011 – Chair: Bill Hewlett
- Council to remain as is, but with a third graduate member
 - measures to enable Council to become more strategic – eg Annual Council Strategy Meeting
 - change number of meetings per year: ASM plus 3xCouncil and 6xExec Board
 - re-position the Executive Board, merged with the Finance Committee, with the remit to ensure that the strategy set by Council is effectively delivered through the business plan
- 2014 Advice on ICE Governance by Saxton Bamfylde.
- No changes to the governance structure as a result.

- 2018 Council review of ICE Governance – commenced 2017; implemented by ballot 2018.
- Council to remain at 38 members – to provide strategic direction and advice
 - Trustee Board of 12 members, accountable to an advisory Council
 - Trustee Board able to make, amend and rescind Regulations without recourse to a member ballot
 - Charter and By-laws amended to move certain admission, qualification and training requirements, as well as certain disciplinary provisions, into the Regulations.
- Approved by the Privy Council in October of that year.



Commission Communication and Consultation

Date	Communication with Members	Commission Web Page
18 Oct 18	ICE News Release announcing Chair of the Commission	
12 Dec 18	ICE News Release published and linked on ICE home page pointing to Commission web page and inviting comments about the Governance review to the Commission email address.	Commission web page established describing the purpose of the Commission with links to the Terms of Reference and Commission members
18 Dec 18		Commission members updated to include Philip Greenish CBE
14 Jan 19	Item about the Commission included in Jan members' email, with link to associated ICE News Release giving notification of open evidence sessions and link to Commission web page	Link to Commission web page pinned to ICE Home Page Web page updated with notification of evidence session on 22 Jan 19
25 Jan 19	Dedicated email to all Members setting the purpose of the Commission and associated ICE News Release, linking to the web page, summarising Commission work plan, providing notification of evidence session on 20 Feb 19 and inviting comment to the Commission email address	Significant enhancement to webpage, summarising the Commission work plan, providing notification of the evidence session on 20 Feb 19, inviting comment to the Commission email address and providing the following links: <ul style="list-style-type: none"> - Terms of Reference - Membership - Evidence Submissions for 22 Jan 19 - Summary of ICE Governance - ICE Royal Charter and By-Laws - History of ICE Governance - Governance of Comparator Bodies - Key Principles of Good Governance - Governance Code for Larger Charities - Minutes for 6 Nov 18
4 Feb 19	Top item in February members' email, linking to Commission web page	Confirmed those giving evidence on 20 Feb 19.
8 Feb 19		Added a closing date of 8 April for comments by members at Stage 1. Signalled a further opportunity for comment during Stage 3 Added names of Paul Jowitt's co-contributors at evidence session 20 Feb

14 Feb 19	¾ page article in New Civil Engineer, explaining the purpose of the Commission and its work plan, and inviting comment from ICE member via the web page.	
21 Feb 19		Significant update to website with update on Commissions work plan, notification of evidence session on 29 April, publication of evidence papers submitted for the 20 Feb open session, minutes of 22 Jan meeting and update to the review of comparator bodies.
4 Mar 19	Top item in Members' email linking to associated news story which provided an update on the Commission's work, sought submissions from members using the Consultation Pack and advised of the closing date for Stage 1 submissions.	
14 Mar 19	Reference to Commission and link to web page included in Presidents' Apprentice/Future Leader Alumni Quarterly Update	
28 Mar 19	Direct email to members of ICE Scotland from their Chair, James Young, encouraging them to respond to the Commission's Stage 1 consultation.	
30 Apr 19		Update on progress of the Governance Review. Stage 1 consultation now closed. Publication of evidence on 16 and 29 April and minutes of meetings on 20 February 2019 and 16 April.

Summary of Stage 1 Consultation Responses

The table following indicates the main common themes that were raised in the Commission's stage 1 consultation. It covers the responses from:

- | | |
|---|-----------------|
| ▪ Papers submitted to formal Evidence Sessions | Vol 2 Section A |
| ▪ Meetings with Principal ICE Boards and Committees | Vol 2 Section B |
| ▪ Submissions from ICE members via the Commission email address | Vol 2 Section C |
| ▪ Response from Specialist Knowledge Societies | Vol 2 Section D |

This is simply a high-level summary. The Commission reviewed all of the above papers and took account of the views expressed therein when developing this Interim Report.

The full responses can be read in Volume 2 of this Interim Report.

Key Theme	Evidence Papers	Boards & Committees	Submissions by Members	Specialist Knowledge Societies
	(for key see end of table)			
Key Governance Principles				
1. Importance of ICE being a membership organisation – governance must be accountable to the members	TF, QL, PJ	Scot, NI, SEE, IC	#4 #11 #12 #14 #18 #25 #27 #29 #34	PIANC
2. Distinction between Governance (set strategy, monitor performance ensure medium and long-term success) and Management (delivering the performance set by governance)	AW, NB	Counc	#34	
3. Elected Council should set vision and strategic direction of Institution rather than Trustee Board	PJ		#7	
4. Trustee Board should set vision and strategic direction of Institution	AW, AP		#13 #34	
5. Need for governance bodies to behave ethically, honourably, truthfully, with probity and in good faith	AP, PJ		#32	
Top-Level Governance Structures				
6. Prefer large mainly advisory Council and smaller Trustee Board	AW, NB, TF, PJ, RM	TB, Counc, UKRAC, NE, EE, NI, GSNet	#1 #4 #6 #7 #9 #13 #14 #15 #17 #22 #25 #27 #31	RCEA
7. Prefer large Trustee Council	QL	Scot	#8 #10 #12 #18 #20 #24	
8. Desire for collaboration between Trustee Board and Council, with complementary roles	TF	TB, Counc, EE, GSNet	#27	
9. Strengthen role of Council / avoid it becoming a 'talking shop'			#8 #13 #22 #23 #28 #31	

Key Theme	Evidence Papers	Boards & Committees	Submissions by Members	Specialist Knowledge Societies
	(for key see end of table)			
10. Trustee Board should be required to consult the Council on certain things, and should give reasons in the event it does not accept the advice	TF	Counc, NE, NI, SEE	#22 #23 #25 #31 #33	
Balance and Composition of Trustee Board				
11. Need to re-balance the Trustee Board	TF, PJ, RM, AP	TB, Counc, Scot, EE, NI SEE, IC, NE	#4 #15 #16 #18 #22 #23 #28 #31	PIANC
12. All trustees must have equal standing, and each should lead a Portfolio	TF, RM, AP	Counc	#15	
13. Elected TB members should form a majority / at least 50% of the Trustee Board		Counc, NE, NI, SEE, IC	#4 #13 #16 #18 #19 #23 #25 #27 #28 #31	PIANC
14. Not necessary to have 7 Vice Presidents on Trustee Board / non-succeeding VPs should be regarded as Trustees	TF, PJ	TB, Counc, UKRAC, NE SEE, IC	#4 #22 #23	PIANC
15. Importance of identifying the required skills, experience, knowledge and diversity for Board positions and appointing trustees to match the requirements	AW, NB, TF, QL, AP, RM	TB, Counc, UKRAC, EE, GSNet	#1 #10 #11 #15 #23 #27	RCEA
16. The Trustee Board should undertake regular reviews of Board effectiveness	AW, GSNet			
17. VP (or Trustee) for UK Regions and International must be members of Trustee Board		UKRAC, NE, NI		
18. One member of ICE staff should be elected to the Trustee Board by ICE staff members			#25	
19. Specialist Knowledge Societies should appoint one member to the Trustee Board				PIANC
20. Graduates and Students should be represented on the Trustee Board		GSNet		

Key Theme	Evidence Papers	Boards & Committees	Submissions by Members	Specialist Knowledge Societies
	(for key see end of table)			
Method of Appointment to Trustee Board				
21. Elected trustees to be directly elected by members, subject to meeting the necessary requirements	NB, RM	Counc, IC	#1 #10 #23 #27	RCEA
22. Elected trustees to be directly elected by members (no reference to meeting requirements)	PJ	AC	#6 #9 #16 #19 #28	PIANC
23. Elected trustees should be elected by the Council from within their own number		Counc	#13 #14 #15 #16 #17 #18 #25 #27	
24. There should be a combination of methods of election to the TB – some elected by Council from within the Council and some elected by members		NE	#22 #27 #33	
25. Membership must be able to nominate individuals for consideration by NomCo	AW, RM		#6	
26. Need to avoid trustees being seen as self-selecting / self-perpetuating	TF		#1 #25	
President's Role				
27. President should Chair both Council and the Trustee Board		TB, Counc, IC	#15 #25	
28. President should not Chair the Trustee Board		Counc, NE, SEE	#13 #23 #31 #33	PIANC
29. President should not Chair both the Trustee Board and the Council	PJ	NE, EE, NI, SEE, IC	#22 #28	
30. President to have served a number of years as succeeding VP for continuity			#6	
31. Succeeding VPs / President must understand the Institution	TF, QL, RM	Scot	#4	

Key Theme	Evidence Papers	Boards & Committees	Submissions by Members	Specialist Knowledge Societies
	(for key see end of table)			
Transparency, Engagement				
32. Need to stimulate higher percentage of members voting in ballots		UKRAC, Scot	#2 #9 #12 #19 #25	
33. There should be a quorum or a minimum percentage of those entitled to vote taking part, before the result of a ballot could be considered valid.			#2 #12 #25	
34. Importance of transparency - eg NomCo process / Trustee Board and Council minutes should be easily found on the ICE website	GS, QL, TF, AP, GSNet	UKRAC, Scot, NE, EE, SEE, IC, GSNet, LSC	#10 #12 #14 #22 #32	RCEA
SGMs				
35. SGM should make use of electronic technology / voting	TF	UKRAC, Scot, GSNet	#11 #16 #19	
NomCo				
36. NomCo should be appointed by and directly accountable to the Council, not the Trustee Board			#25	
37. NomCo should recommend appointments of Chairs of Disciplinary Board and Professional Conduct Panel			#21	
38. There should be an 'aspiring member' on the NomCo	GSNet			
Out of Scope				
39. Process for 2018 governance changes	QL, PJ	Scot, SEE	#2 #5 #8 #11 #19 #20 #24 #25 #30 #32	

Key Theme	Evidence Papers	Boards & Committees	Submissions by Members	Specialist Knowledge Societies
	(for key see end of table)			
40. Members who participate in the workings of the Institution should not be described as volunteers			#29	
41. Aspiring Members should be included in membership ballots	GSNet			

Key:

Evidence Papers:

AW Andrew Wyllie CBE, President
 NB Nick Baveystock, Director General and Secretary
 GSNet Graduates and Students Network and Graduates on Council
 TF Teresa Frost
 QL Quentin Leiper CBE
 PJ Paul Jowitt CBE, Adrian Coy, Ian Jenkinson, Richard Bayfield
 RM Lord Robert Mair CBE, Past President and Chair of the Nomination Committee
 AP Dr Andrew Purkis OBE, Charity and Trustee Governance Expert

Boards and Committees

TB ICE Trustee Board
 Counc ICE Council
 AC Audit Committee
 GSNet Graduates and Students Network
 LSC Learning Society Committee
 IC International Committee
 UKRAC UK Regional Affairs Committee (including submissions from UK Regions and Branches – some with conflicting views)
 Scot ICE Scotland
 NE ICE North East
 EE ICE East of England
 SEE ICE South East of England
 NI ICE Northern Ireland

/key continued

Specialist Knowledge Societies

RCEA Railway Civil Engineers Association

PIANC PIANC UK Section - The World Association for Waterborne Transport Infrastructure

Comparator Organisations

Introduction

1. As part of its initial evidence-gathering, the Commission reviewed the governance arrangements of nine comparator bodies and compared them with ICE.

ICE	Institution of Civil Engineers
IChemE	Institution of Chemical Engineers
IET	Institution of Engineering and Technology
CIHT	Chartered Institution of Highways & Transportation
IMechE	Institution of Mechanical Engineers
IStructE	Institution of Structural Engineers
CIWEM	Chartered Institution of Water and Environmental Management
RIBA	Royal Institution of British Architects
RTPI	Royal Town Planning Institute
RAEng	Royal Academy of Engineering

2. Full details for each comparator are given on the Commission's web page [https://ice.org.uk/about-ice/who-runs-ice/presidential-commission under Background Papers / Governance of Comparator Organisations](https://ice.org.uk/about-ice/who-runs-ice/presidential-commission-under-Background-Papers/Governance-of-Comparator-Organisations).
3. However, an overview of the headline governance arrangements for the main Engineering and Built Environment Institutions is given in Table 1 overleaf:



	ICE	IChemE	IET	CIHT	IMechE	IStructE	CIWEM	RIBA ¹	RTPI	RAEng
Status	Royal Charter	Royal Charter	Royal Charter	Royal Charter	Royal Charter	Royal Charter	Royal Charter & CLG	Royal Charter	Royal Charter	Royal Charter
Charity?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
No of members	92,000	37,000	168,000	14,500	120,000	30,000	10,000	46,000	25,000	1,600 Fellows
Trustee Body	Trustee Board	Board of Trustees	Trustee Board	Board of Trustees	Trustee Board	Trustee Board	Trustee Board	Board of Trustees	Board of Trustees	Trustee Board
No of Trustees	12	12	16	12	15	11	15	12	17	13, but up to 15
Who Chairs TB? Term	President 1yr	President 1yr	President normally 1 yr but up to 3yrs	President 1yr	President 1yr	President 1yr (changing to select Chair of TB for 2+2yrs)	Trustee elected by other Trustees (not President) 3yrs	President (normally, but not necessarily) 2yrs	Chair elected by the General Assembly 2yrs	President up to 5yrs
No. of VPs inc above ²	7	4+1	8	2+5	6	3	1	3+2	1+2	3
How appointed ^{3&4}	NomCo approved by Council, some elected by Council	approved by Nom Comm, elected by Inst members	nom by Trustees & Inst members, elected by Inst members	recced by Pres Team, approved by Council	nom by Trustees & Inst members, elected by Inst members	recced by Nom Comm, approved by Council	nom by members, interviewed by Panel of Trustees	appointed by Council	elected by Gen Assembly some apptd by Trustees	Elected by Fellows, some apptd / co-opted
Advisory Body?	Council	Congress	Council	Council	Council	Council	Assembly	Council	General Assembly	N
No of Membs	38	40	28	40	67	85	all Inst members	55	66	-
How appointed ⁴	elected by Inst members	elected by Inst members	elected by Inst members	elected by Inst members some apptd	elected by Inst members some apptd	elected by Inst members some apptd	n/a	elected by Inst members, some apptd	elected by Inst members, some apptd	-
Provision for SGM	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Requisitioners	60	50	50	lesser of 10% or 100	50	lesser of 2% or 250	250	1%	50	10%
Voting at SGM	in person only	in person & in advance	in person only	in person only	in person & proxy	in person only	in person only	in person & in advance	in person only	in person & proxy

Table 1: Overview of governance for the main Engineering and Built Environment Institutions

Footnotes:

1. For RIBA, the table shows proposed arrangements approved by the Council in Jun 19 which, subject to approval of the Privy Council, will be put to a ballot of members and general meeting in Oct 19 for implementation in Jan 20.
2. The number of Vice Presidents is given as x+y, where x is the number of VPs and y is the number of officers who fulfil the role of VPs, such as Hon Treasurers or Chairs of Boards. Past Presidents are excluded from the count.

/contd

3. These are a summary of the appointment procedures. There may be minor variations / intricacies depending on the particular position.
4. Elected by Inst Members means elected by the voting or in some cases corporate members of the Institution.

Comparison

4. The key points arising from a review of the governance of the ten Engineering and Built Environment Institutions are given below:

5. Legal and Charitable Status

All are incorporated by Royal Charter and all are registered charities.

6. Number of Members

The number of members for each body is given in Table 1, with ICE being the third largest with some 92,000 members.

7. Size of Trustee Board

All of the bodies reviewed are governed (or, in the case of RIBA, proposed to be governed) by a Trustee Board varying in number between 11 and 17 Trustees.

There is a cluster of six bodies with Trustee numbers between 11 and 13 (including ICE which has 12), and four bodies have a somewhat larger number of Trustees in the range 15 to 17 members.

8. Chairing the Trustee Board

In most of the bodies, the President chairs the Trustee Board for their term of office.

IStructE is in the process of separating the roles of President and Chair of the Trustee Board. The Chair will be appointed through a process of advertising and interview. Term will be 2 years with the possibility of a further 2 years. The President will remain a member of the Trustee Board.

In CIWEM the Trustees chose their Chair from among their membership and the Chair serves for 3 years. It cannot be the President.

In RTPI, the Chair of the Board of Trustees is elected by the General Assembly from among the Chartered Members for a term of two years (with an opportunity to stand again for one further term of two years).

9. Number of Vice-Presidents

The number of Vice Presidents for each body is given in Table 1 and ranges from 1 to 8 (including officers who fulfil the same sort of role as VPs, such as Hon Treasurers or Chairs of Boards). ICE has 7 VPs, the second largest number. Half of the bodies have three Vice Presidents or fewer.

10. Appointment of Trustee Board

The arrangements for the appointment of Trustees vary and are relatively complex. Even within a particular body there are often different methods of appointment for distinct elements of the Trustee Board.

However, setting aside the appointment of ex-officio members (who are there by virtue of their office, such as a President, Past President, Hon Treasurer etc) the various methods of appointment to the Trustee Board fall into the following general groups:

- recommended by a Nomination Committee (or a subset of the Trustee Board) and approved by the Council of the particular body – used by five of the ten bodies (ICE, CIHT, IStructE, RIBA, RTPI);
- nominations by Trustee Board and voting members of the Institution, with election by the corporate / voting members of the Institution – used by three bodies (IET, IMechE, RAEng);
- candidates approved by a Nomination Committee, with election by the voting members of the Institution – used by one body (IChemE);
- candidates interviewed by a Panel of Trustees – used by (CIWEM);

In many cases, there is also provision for additional members of the Trustee Board to be appointed or co-opted by the Board.

11. Council or Strategic Advisory Body

All bodies have at least provision for a Council / Congress / Assembly to act as strategic advisory body (except for the Royal Academy). Most are formalised, although in the case of CIWEM the General Assembly consists of the entire membership.

Of the other eight bodies, the number of Council members ranges from 28 to 85, with ICE having 38.

In all eight cases, most Council members are elected by the voting members of the body, but in 5 bodies (CIHT, IMechE, IStructE, RIBA and RTPI) there is provision for some to be appointed by Trustees or the Council, or are ex-officio (for example, Group chairs and Regional Chairs in IMechE).

12. Special General Meetings

All bodies have provision for a Special General Meeting that can be requisitioned by members of the body.

In general, requisitioners must be voting members of the body, but bodies specify the number of requisitioners in various ways:

- an absolute number, varying from 50 to 200 (ICE requires 60);
- a percentage of the voting members, varying from 1% to 10%;
- a combination, being the lesser of an absolute number and a percentage of voting members.

The arrangements for voting at an SGM vary:

- in person only (six bodies, including ICE);
- in person or in advance (three bodies);
- in person, in advance or electronically at the meeting (one body – IChemE).

Background Paper

Key Principles for Good Governance

Charities exist to fulfil their charitable purposes. Trustees have a responsibility to understand the environment in which the charity is operating and to lead the charity in fulfilling its purposes as effectively as possible with the resources available. To do otherwise would be failing beneficiaries, funders and supporters. The board's core role is a focus on strategy, performance and assurance.

Sound governance arrangements are essential for the effective leadership, management, accountability and continuous improvement of the organisation, and the members and stakeholders it serves.

There should be seven principles to sound governance:

1. Organisational purpose
2. Leadership
3. Integrity
4. Decision-making, risk and control
5. Board effectiveness
6. Diversity
7. Openness and accountability.

1. Organisational purpose

Having a clear understanding of the purpose of ICE is vital if all decisions are to help the organisation meet its objectives.

The first principle covering organisational purpose therefore makes absolute sense in attempting to remind board members of what they are there for.

Key activities board members might want to encourage and implement to support this include:

- Ensuring there are visits by board members to the ICE Regions and International Areas, so they can ascertain what is happening at the grassroots by hearing the compliments and concerns of staff and stakeholders.
- Bringing the stories and experiences of those that use ICE's services to the boardroom – perhaps as a standing agenda item before the formal work of the board.
- Introducing regular updates to board members on the external environment relevant to the activities of ICE.
- Tabling discussions about ICE's impact and how to measure its progress in achieving its objectives.
- Offering additional training and development to assist with board members understanding of the business plan and funding arrangements, and the risks inherent in each.
- Ensuring strategy sessions cover whether ICE operates in the most effective way, and asking whether partnership or collaboration would deliver more for stakeholders.

2. Leadership

Strong, ethical and visible leadership is the second of the seven principles, with a supporting rationale that the tone and culture of an organisation comes from the top.

To assist in promoting strong leadership, board members could consider:

- Introducing to board agendas and reports a regular item that reviews decisions made in the light of values agreed by the board, and not just of legal and regulatory requirements.
- Regularly discussing whether the agreed vision, values and culture are the right ones, and are evidenced at every level.
- Ensuring matters reserved to the board, schemes of delegation, terms of reference and other documents, especially those outlining the role and duties of the board and senior management, are regularly reviewed and updated.
- Creating a corporate calendar that sets out the main work of the board and establishes regular board meetings that balance historical and compliance matters with forward-looking strategic items.

3. Integrity

The third principle promotes the importance of board members acting with integrity in order to support the public's trust in ICE.

Reputation is a precious asset for any organisation and without the ongoing support of those empathetic to ICE's aims, its sustainability and ability to make a difference are endangered.

Board members could discuss:

- Implementing a code of conduct and introducing board standards to which board members can sign up.
- Improving the board's understanding of conflicts of interests and loyalties, updating the board's conflicts of interests policy and register of interests, gifts and hospitality. This should be done at the same time as updating the same documents covering staff, to ensure consistent messages, practices and culture.
- Introducing reports to the board that highlight the themes of comments, concerns, complaints and compliments received to better understand how ICE is viewed externally.

4. Decision-making, risk and control

Many of the traditionally 'meaty' governance issues can be found under principle four. This principle reinforces the point that the board is ultimately responsible for ICE's decisions and actions, or failure to decide and act, but that it should not be involved in operations.

Key actions the board members could initiate, with the approval of the chair, include:

- Board agendas and papers that focus discussions on strategy, performance and assurance rather than operational matters.
- A discussion on ICE's risk appetite, and an assessment of its risk register and risk management arrangements.
- Ensuring that a thorough debate of all KPIs takes place to cover any possible harmful impact on ICE's culture and values.
- Placing the auditor's management letter at the top of a board agenda to ensure the trustees are aware of its contents and implications.

5. Board effectiveness

If the board is to help the ICE achieve its objectives, board members must be keen to be at the top of their game. Board effectiveness is a key aspect of many governance codes.

To assist this, the board members should consider:

- The rigour and effectiveness of board member recruitment, induction and retention practices, with a view to bettering them.
- Reviewing the governing document to ensure it enables ICE to recruit the best candidates from a wide pool and has fixed tenure terms.
- Updating the skills audit.
- Tabling a discussion about the competence of the board.
- Undertaking a board review.

6 Diversity

Boards with members of different backgrounds, experiences and thinking are more likely to encourage debate and make better decisions. The board might wish to consider:

- Introducing board training and development on diversity matters.
- Assessing the diversity of board to find any obstacles given groups may face and how to overcome them.
- Using a range of methods to recruit board members, targeting particular groups with specific messages to help broaden interest in the role.
- Adopting diversity targets, which are monitored and reported against regularly.

7 Openness and accountability

Organisations, like good governance, cannot operate successfully in a vacuum. There has to be reasonable and meaningful accountability to ensure board members act in line with their duties and the best interests of ICE.

Board members might look at:

- Introducing a disclosure policy for ICE, covering those types of documents and information ICE will and will not release, following an agreed process.
- Encouraging board members to engage with stakeholders in a range of ways, as agreed in a stakeholder engagement policy.
- Ensuring key information is kept up to date on the website and can be found easily.
- A widely promoted compliments and complaints policy, with feedback monitored and presented to the board.

Structure

Appropriate board structure is vital for ensuring good governance. Board structure refers to the size and composition of the board, including its independence, the presence of representative members and the balance of gender, racial, cultural and other forms of diversity, skills and experience. A board operates most effectively when its members have different skills, knowledge and experiences. When determining composition and succession planning, consideration should be given to the:

- current performance of the board
- competency and experience mix of board members
- values of ICE, board and board members
- length of service of current board members
- diversity of current board members
- specified compositional requirements, including representative obligations
- availability of potential board members to fulfil requirements.

Appointments

The board should understand the process for appointing members. An appropriate process should exist for board member succession, with emphasis on the timing required for replacement to maintain a balance between new and existing board members.

While boards may not have the ability to appoint their own members, they should ensure that a transparent and accountable process exists for any recommendations. Appointments to boards should occur on the basis of merit and transparency. For representative nominations, stakeholder groups should be encouraged to consider the merit of applicants in relation to the requirements of the board.

A board skills matrix is an important tool to assist a board to identify any gaps. In an immediate sense, this might mean that a board needs to look at professional development for members. In a strategic sense, a board skills matrix can be used as a tool to identify potential members for recommendation to address the identified skills gaps and longer-term board succession planning.

Independence

The board should have sufficient independence to discharge its responsibilities. Where permitted by legislation, the chairperson should be independent. A lack of independence can contribute to increased complexity in managing conflicts of interest and reduced efficacy of the board. Factors or relationships that may negatively impact on the independent management of issues should be identified at the commencement of the board meeting, and decisions made on actions to mitigate this impact.

Board committees

It is common for boards to delegate aspects of their work to committees of the board. This allows the board to distribute its workload and enables the subcommittee to perform a detailed analysis of important or sensitive matters before making recommendations for the board to consider. The board, not the board committee, is accountable for all decisions.

When assessing its strategic priorities, the board should consider what types of committees it may require. It may have several 'standing' or permanent committees, such as a finance or an audit and risk committee, with other committees established as required. Board committees need to be established with:

- a specific charter, with clear terms of reference
- delegations that do not undermine the board's delegations to the CEO
- an appropriate number of directors, including a majority of non-executive directors, if allowed by the enabling constitution

- procedures for making and keeping agendas and minutes, and reporting to the board
- a clear expectation that the decision-making responsibilities of the full board are not to be compromised by the activities of any board committee, and that significant issues will be reported to the board for the board to discuss and decide upon.

The board must continually monitor the activities of each committee as part of its duty of care, diligence and good faith. A committee's charter should be evaluated annually to ensure it is appropriately focused and that the committee is fulfilling its functions. If not, amendments should be made.

Quick review – Structure and composition

- Is the board aware of the process or requirements for board appointments?
- Does the board use a 'skills matrix' to ensure members have the necessary skills, experience and knowledge to enable the board to fulfil its purpose?
- Is there sufficient diversity on the board?
- Has the board developed a succession plan to identify the skills needed by the board?
- Are board members able to commit the time required to effectively undertake their role?

D'Arcy Myers

Executive Secretary to the Commission



List of Interim Findings

Interim Finding 1

The Commission **recommends** that ICE's top-level governance structures should comprise a compact Trustee Board with a larger, mainly advisory, Council. This is subject to considering the balance of the Trustee Board, the method of appointing its members and other matters discussed later in this Interim Report.

Interim Finding 2

The Commission **recommends** the key principle that a majority of Trustee Board members should be elected by the ICE voting membership (subject to further consideration as to the method of election in section 7) giving the proposed Trustee Board configuration shown in para 6.1.4, with a quorum of at least seven.

Interim Finding 3

The Commission **recommends** the key principle that all trustees should have equal levels of responsibility with each trustee normally leading on a portfolio.

Interim Finding 4

The Commission **recommends** the key principle that:

- one member of the Trustee Board should be nominated by the NomCo and approved by the Council;
- if necessary, a second such member may be nominated by the NomCo and approved by the Council to fill a particular gap for a limited period, increasing the Trustee Board number for that period; and
- exceptionally, there should be provision to nominate a trustee who is not an ICE member.

Interim Finding 5

The Commission seeks further views on three of the four options for electing seven members to the Trustee Board:

- Option B: Election by ICE voting members from a focused candidate list – ie any ICE member who meets the requirements for the vacant trustee position can stand.
- Option C: Election of Council members by the Council - noting that Council members have already been elected by ICE voting members.
- Option D: A combination of Option B and Option C in two separate elections. This would provide, say, three and four trustees respectively.

Interim Finding 6

The Commission **recommends** that NomCo comprises between eight and twelve members of the Institution, including:

- a Past-President of the Institution (Chair);
- the President;
- the Senior Vice President;
- a Graduate or Student member nominated by GSNet;
- at least four and no more than eight other members, a majority of whom must be members of the Council elected by the Council (irrespective of whether they are members of the Trustee Board) with the others appointed by the Trustee Board on the advice of the Chair of the Nomination Committee.

Interim Finding 7

The Commission **recommends** that NomCo:

- identifies a role specification for any position it is considering, setting out the specific characteristics needed;
- gathers detailed information as to how the candidates under consideration meet the role specification and makes nominations on that basis;
- demonstrates to the Trustee Board and Council how the nominee meets the required characteristics of the role; and
- publishes a summary of the process in a NomCo Annual Report, while respecting the confidentiality of the nominations process.

Interim Finding 8

The Commission **recommends** that NomCo makes the nomination to fill any vacancy in the Chair of the Disciplinary Board and Chair of the Professional Conduct Panel, for approval by the Trustee Board and in accordance with the Disciplinary Regulations.

Each Chair should then nominate the members of their respective body, ensuring compliance with the requirements set out in the Disciplinary Regulations, under procedures codified in the Terms of Reference for the Disciplinary Board and Professional Conduct Panel.

Interim Finding 9

The Commission seeks further views on the following options for chairing the Trustee Board and Council

- Option A: President chairs both the Trustee Board and the Council (with measures to mitigate any conflict of interest)
- Option B: President chairs the Trustee Board but not the Council
- Option C: President chairs the Council but not the Trustee Board

Interim Finding 10

The Commission **recommends** that the President's Terms of Reference are revised to specify a more realistic time commitment and to include the important role of engaging with the ICE membership in the UK Regions and International Areas.

Interim Finding 11

The Commission seeks further views on the following options to uphold the key principle that all trustees should have equal levels of responsibility, and to avoid Non-Succeeding Vice-Presidents being seen as superior to other 'ordinary' trustees:

- Vice Presidents will be those trustees who are expected to succeed to the position of President, with other members of the Trustee Board holding the title 'Trustee', and all members normally allocated a particular portfolio; or
- all members of the Trustee Board except for the President should have the title of Vice-President with all members normally allocated a particular portfolio.

Interim Finding 12

The Commission **recommends** the following methods of strengthening the role of Council (without interfering with the Trustee Board's responsibilities, including the Board's ownership of the ICE Plan and Budget):

- the Council should be recognised as the pinnacle of the Institution's Learning Society, with the Learning Society Committee and its Panels reporting through the Council, and the Vice-President Learning Society becoming a member of the Council as well as the Trustee Board;
- there should be a trustee who is Vice President / Trustee for the Council, who will also act as Vice-Chair of the Council;
- the Terms of Reference of both the Trustee Board and the Council should include a requirement for the Trustee Board to consult Council on defined matters of particular significance; and
- the Trustee Board must provide a reasoned explanation to the Council on each occasion when it declines to accept the Council's advice on any significant point.

Interim Finding 13

The Commission **recommends** that one of the trustees should lead Ethics and Professional Conduct as a dedicated and exclusive portfolio.

The Commission **recommends** the Trustee Board should have the power to remove a trustee for justifiable reasons and following due process.

Interim Finding 14

The Commission **recommends** that the Trustee Board and Council consider improving transparency as suggested in this section.

Interim Finding 15

The Commission **recommends** that the Trustee Board considers a programme of inviting particular groups to present to it, in order to understand the internal and external environment, and the Trustee Board should discuss with GSNet the possibility of an aspiring member attending board meetings as an observer, or non-voting participant, on a regular basis.

Interim Finding 16

The Commission **recommends** that the Trustee Board and Council examine in depth the low turnout in ICE governance votes and elections, benchmarking with comparator bodies, seeking out the root cause through member engagement surveys and taking the advice of specialists such as the Electoral Reform Society; all with the purpose of improving member engagement in key governance votes.

Interim Finding 17

The Commission **recommends** there should be no change to the number of members required to requisition an SGM but, in the event there are repeated or vexatious calls for SGMs, the Trustee Board should reconsider the matter.

Interim Finding 18

The Commission **recommends** that the By-Laws are amended to make clear that non-Voting Members may make an oral contribution at an SGM.

Interim Finding 19

The Commission **recommends** that the By-Laws are amended to permit electronic voting for voting members unable to attend an SGM.