

**CODE OF CONDUCT**  
**for**  
**COUNCIL**  
**and**  
**MEMBERS OF COUNCIL**

**A. Introductory:**

1. Section 27(1) of the Higher Education Act, Act 101 of 1997 as amended, requires from the Council of a public higher education institution to govern such institution (subject, however, to the provisions of the Higher Education Act and the Statute of such institution).
2. As the Council of a public higher education institution is charged with governing such institution, the Council of such institution is, therefore, responsible for its financial affairs, affairs relating to quality instruction and proper evaluation of students, its general reputation and standing within South Africa and also in the rest of the world and, in general, for the maintenance of good order in the affairs of the institution.
3. The Council of a public higher institution, being the highest governing body of such institution, should therefore see to it that the institution sustains the confidence of the public and of the State.
4. As a result of its composition the Council of a public higher institution is not in a position to manage the day-to-day affairs of such an institution. Its main function should rather be one of providing general policies as how such management should be conducted. The day-to-day management should then be entrusted to the rector of the institution and his/her executive management team. The rector is, however, always accountable to the Council of the public higher institution for his/her decisions and conduct regarding the day-to-day management of such institution.

**B. Statutory Obligations of Council:**

1. Various sections of the Higher Education Act and paragraphs of the Statute of the University of the Western Cape describe the (legal) obligations of the Council of the University of the Western Cape.
2. The Higher Education Act requires that Council must:

- 2.2 subject to policy determined by the Minister of Education and with the concurrence of Senate, *determine the language policy* of the University (and publish such policy and make it available on request)[section 27];
- 2.3 after consultation with the Students' Representative Council, *provide a suitable structure* to provide Council with advice on policy for student support services [section 27];
- 2.4 *appoint the non-academic employees* of the University [section 34]; 2.5 after consultation with Senate, *appoint the academic employees* of the University [section 34];
- 2.6 subject to applicable labour law, *determine the conditions of service*, privileges and functions of employees of the University [section 34]; 2.7 subject to applicable labour law, *determine disciplinary provisions* (i.e. a code of conduct and disciplinary rules and procedures) with respect to employees of the University [section 34];
- 2.8 subject to the provisions of the Higher Education Act and after consultation with Senate, *determine the admissions policy* of the University (and publish such policy and make it available on request) [section 37];
- 2.9 in the manner determined by the Minister of Higher Education, *keep record of its proceedings and keep accounting records* (of assets and of income and expenditure) [section 41];
- 2.10 annually *provide the Minister of Education with a report* on overall governance of the University and an audited statement of the University's income and expenditure (including a balance sheet and cash flow statement) [section 41]; and
- 2.11 provide the Minister of Education with such information he/she may reasonably require [section 41].

3. The Statute of the University requires that Council, in addition to the obligations enumerated in 2. above, must:

- 3.1 *decide on the appointment of at least 4 additional members* of Council [paragraph 16C.1.16];
- 3.2 *elect a chairperson and vice-chairperson* [paragraph 16E.1]; 3.3 *meet at least twice every year* [paragraph 16H.1] and
- 3.4 *establish an executive committee* [paragraph 16L.1].

### **C. General Responsibilities of Council:**

- 1. The primary responsibility of Council is to carry out, diligently and objectively, those obligations imposed on it by the Higher Education Act and the Statute of the University of the Western Cape and, thereby, to serve the interests of South Africa in general and that of the University of the Western Cape in particular.

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2. In addition to its primary responsibility, Council also has responsibility for:

- 2.1 *preserving the integrity and good name* of the University;
- 2.2 *clarifying the mission and strategic objectives* of the University; 2.3 *promoting and encouraging academic excellence* within the University in order to ensure world

- class performance and global competitiveness; 2.4 *promoting the advancement of the University*;
- 2.5 *promoting the upliftment of previously disadvantaged persons and groups*; 2.6 *appointing suitably qualified and experienced persons to occupy the position of Rector, Vice-Rector, Registrar, Executive Director and Dean within the University*;
- 2.7 *supporting and encouraging persons occupying the posts referred to in 2.6 above and from time to time assessing their performance*;
- 2.8 *preserving the autonomy, academic and otherwise, of the University*; 2.9 *ensuring that adequate physical development takes place and that adequate financial resources exist and that the University's physical and financial resources are cost-effectively utilised*;
- 2.10 *conveying the educational needs of society to the University's management*;
- 2.11 *fostering an effective relationship between Council, the University community and the community at large*;
- 2.12 *respecting the autonomy of the functional units of the University*; and 2.13 *seeing to it that individual members of Council carry out those duties and functions imposed on them by the Higher Education Act and the University's Statute in general and that they regularly attend meetings of Council and, furthermore, actively take part in Council's deliberations in particular.*

#### **D. General Duties and Responsibilities of Individual Members of Council:**

1. Apart from the obligations and responsibilities of the Council of the University of the Western Cape as a collective, the members of this collective also have, as individuals, particular obligations and responsibilities.
2. Individual members of Council have to take part, in an *objective and unbiased manner*, in the deliberations and decision-making processes of Council and should, therefore, *refrain from accepting gifts and favours* from individuals or businesses:
  - 2.1 *if such gifts and favours are clearly intended to be prejudicial to objective and unbiased deliberation and decision-making or clearly intended to exert undue influence on an individual member of Council*; or
  - 2.2 *if such gifts and favours, however innocently intended, may be viewed or perceived by the University community or the public at large to be prejudicial to objective and unbiased deliberation and decision-making or*

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viewed or perceived as exerting undue influence on an individual member of Council.

3. The Statute of the University of the Western Cape prescribes that a member of Council (other than the Rector and a Vice-Rector) *automatically vacates* his/her office as member of Council if:
  - 3.1 he/she, not being a member by virtue of him/her being an employee or student of the University, *becomes an employee or student* of the University [paragraph 16F.1.4];

- 3.2 he/she is convicted of an offence by a court of law and *sentenced to imprisonment* without the option of a fine [paragraph 16F.1.3];
- 3.3 he/she is *declared insolvent* by a court of law [paragraph 16F.1.2]; 3.4 he/she is *absent from two consecutive ordinary meetings* of Council *without having requested and obtained the leave of Council* for such absence [paragraph 16F.1.1]; and
- 3.5 his/her *period of office has expired* [paragraph 16D.1].

4. In view of 3. above *an individual member of Council therefore has the responsibility to:*

- 4.1 *regularly attend meetings* of Council and to inform Council in writing (or electronic mail), through its secretary (namely the Registrar of the University) if he/she is not able to attend a particular meeting of Council; and
- 4.2 *inform the secretary of Council* in writing (or electronic mail) and without delay when he/she has *become insolvent*, convicted of an offence and *sentenced to imprisonment* or, in the case of a member of Council who is not an employee or a student of the University, when he/she *has become an employee or student* of the University.

5. Apart from the duties and responsibilities imposed on individual members of Council by the Higher Education Act and by the University's Statute, an individual member of Council furthermore has the *following moral and ethical responsibilities* to the University, Council, his/her fellow councilors and the South African community at large, namely:

- 5.1 *to judge issues of policy serving before Council objectively* and without any undue regard to pressure, political or otherwise, or opinions to the contrary;
- 5.2 *to come to meetings of Council fully prepared* and fully apprised of the contents of documentation serving before Council;
- 5.3 *to speak his/her mind* at meetings of Council;
- 5.4 *to have due regard for the opinions, views and dignity of his/her fellow councilors;*

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- 5.5 *to communicate promptly to the Chairperson of Council and/or the Rector any significant concern or complaint* which has come to his/her notice and to allow the Chairperson of Council and/or the Rector to deal with such matter;
- 5.6 *to recognize the Rector as the primary spokesperson for the University and the Chairperson of Council as the only person to speak for and on behalf of Council;*
- 5.7 *to foster openness and trust among councilors* on the one hand and *among Council and the university administration, faculties, staff and students* on the other hand;
- 5.8 *to foster openness and trust in relationships between the University and the government of the Republic of South Africa;*
- 5.9 *to foster openness and trust in relationships between the University and the South African community at large;*
- 5.10 *to recognize that no individual member of Council may make any request or demand for action* if such action may violate any of the policies and rules of the University and/or Council;
- 5.11 *to maintain, at all times, the highest ethical standards* and never to allow any personal conflict of interest to affect decisions made;

- 5.12 to *recognize that authority to govern the University resides only with Council as a whole and not with any of the individual members of Council;*
- 5.13 to *ensure that any disclosures made to Council or the Rector are accurate;* 5.14 to, subject to the provisions of South African common and statutory law, *keep confidential any information* regarding the University, its employees and its students coming to his/her knowledge as a result of his/her access to documentation serving before Council and to *keep confidential discussions at meetings* of Council;
- 5.15 to *maintain an overriding loyalty to the entire University* rather than to any part of it or constituency within it;
- 5.16 to *assist with the enhancing of the corporate image* of the University as well as *assisting with the enhancing of the public image of Council* itself; 5.17 to *support the policies and programmes of the University* once established in accordance with the statutory authority of Council, Senate and/or the Rector; and
- 5.18 to always be *mindful of the fact that the role of Council is one of strategic policy making* and not one of direct involvement in the day-to-day administration and the management of the University.

#### **E. Confidentiality:**

1. Council and individual members of Council has a legal (as well as a moral and ethical) *duty and responsibility to keep matters serving before Council and deliberations and discussions at meetings of Council confidential*, especially if such matters, deliberations and/or discussions may potentially be of a libelous or slanderous nature or may potentially publicly, without just cause, embarrass or

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impair the dignity of individuals (whether they are members of Council, members of the University staff, students of the University or members of the public), business corporations, non-governmental organizations or structures of national or provincial government.

2. Council and individual members should, furthermore, *keep matters serving before Council and deliberations and discussions at meetings of Council confidential* if such matters, deliberations and/or discussions may *negatively affect good order and/or relationships* within the University community.

#### **F. Conflict of Interest:**

1. All *members of Council are at all times obliged and duty bound to accurately disclose any conflict of interest, whether potential or real*, that exists, or may exist, between them and the University or any constituent part thereof. Potential or real conflicts as it may relate to members of Council in their personal capacity, as well as their immediate family members who would, for the purposes of this Code, be defined as a spouse, parents, siblings, children or any other relative if the latter resides in the same household as the member concerned, must be disclosed and reported.
2. Council *must at all times be mindful of any conflict of interest, potential or real*, that may exist or may occur in the relationship between the interest of one or more of its members on the one

hand and the University or any constituent part thereof on the other hand. Council must further be mindful of the fact that it is in the interest of the University to have people of excellence and high standing on Council and that such Council members, who freely share their expertise, are likely to have commitments and interests in the affairs of other institutions and organizations.

3. Should any *individual member* of Council become aware of, or suspect, any real or potential conflict between the interest of any one or more members of Council and that of the University or any constituent part thereof, he/she is *duty bound* to, without delay, officially *bring it to the notice of Council* via the Registrar

whereupon Council must, as soon as possible, deliberate on such matter and decide upon it in accordance with generally accepted practice in this regard.

4. Should a conflict of interest, whether potential or real, between a member of Council and the University arise, the member in question is duty bound to:

4.1 declare, in writing and via the Registrar, such interest to Council before January of each year and at the earliest opportunity if matters should arise during the course of the year;

4.2 declare to Council in the declaration contemplated in 4.1 above, the *nature of the transaction* in question (e.g. whether it flows from a business

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contract between the member and the University), including (a) what the transaction relates to (e.g. provision for catering services, transport services, security services, etc.) and (b) the monetary value thereof;

4.3 declare to Council his/her *fiduciary responsibilities towards other organisations* as director, employee or executive manager, and who may in this capacity experience a potential or real conflict of interest as a consequence of such association and the University affairs to be dealt with by the Council, provided that such declaration is not obligatory where the holding of shares in a company listed on the Stock Exchange constitutes less than 5 percent of the issued shares of such a company;

4.4 declare to Council in the declaration contemplated in 4.1 above, *the nature of the conflict* where membership of a tribunal or quasi-judicial body of the University that deals with disciplinary matters pertaining to students and employees of the University, the issue of permits, permissions, authorization or similar rights or privileges, may constitute a potential or real conflict of interest; and

4.5 submit to Council, for noting and for its information, *copies of all documentation* (e.g. tenders submitted, contracts concluded, etc.) pertaining to the reported conflict in question.

5. Members of Council who have declared real or potential conflict of interests *must reclude* themselves from meetings or during agenda items where such matters are discussed, *unless*

*Council resolves* that the reported conflict is inconsequential and that they may participate in discussions or vote on such matters.

6. A member of Council *must*, at the earliest opportunity, not only inform Council of a transaction or transactions between him/her and the University, but, furthermore, *obtain the express and informed consent of Council* to enter into, to continue with, or to compete for such transaction or transactions, provided that decision of Council should always heed the legal and constitutional rights of such member of Council.

7. A *register of declarations of interests must be circulated* at each meeting of Council and any declarations that are made before or during meetings should be recorded in the minutes of such meeting.

8. Sub-committees of Council that have delegated authority to take final decisions on specified matters *must refer matters where conflicts of interest have been reported to Council for final decision.*

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9. The *Chairperson of Council and the office of the Registrar* (the latter being responsible for arrangements in connection with meetings and accompanying procedures) should as far as possible *ensure that a member of Council, with a direct or indirect interest in competing tenders, bids, or business propositions will not be unfairly advantaged relative to other competitors.*

#### **G. Transparency:**

Subject to E. above, Council as well as individual members of Council must at all times endeavour to *execute their responsibilities in a manner which is as transparent as the particular circumstances may allow.*

#### **H. Committees of Council:**

1. The General Responsibilities of Council (see C. above) are, with the necessary changes, equally applicable to *committees of Council.*
2. The General Duties and Responsibilities of individual members of Council (see D. above) are, with the necessary changes, equally applicable to *members of Council serving on committees of Council.*

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**Approved by Council on 20 March 2003 (C 2003/2, 7.1.2)**

**Amendment of F. approved by Council on 19 March 2008 [C 2008/1]**

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