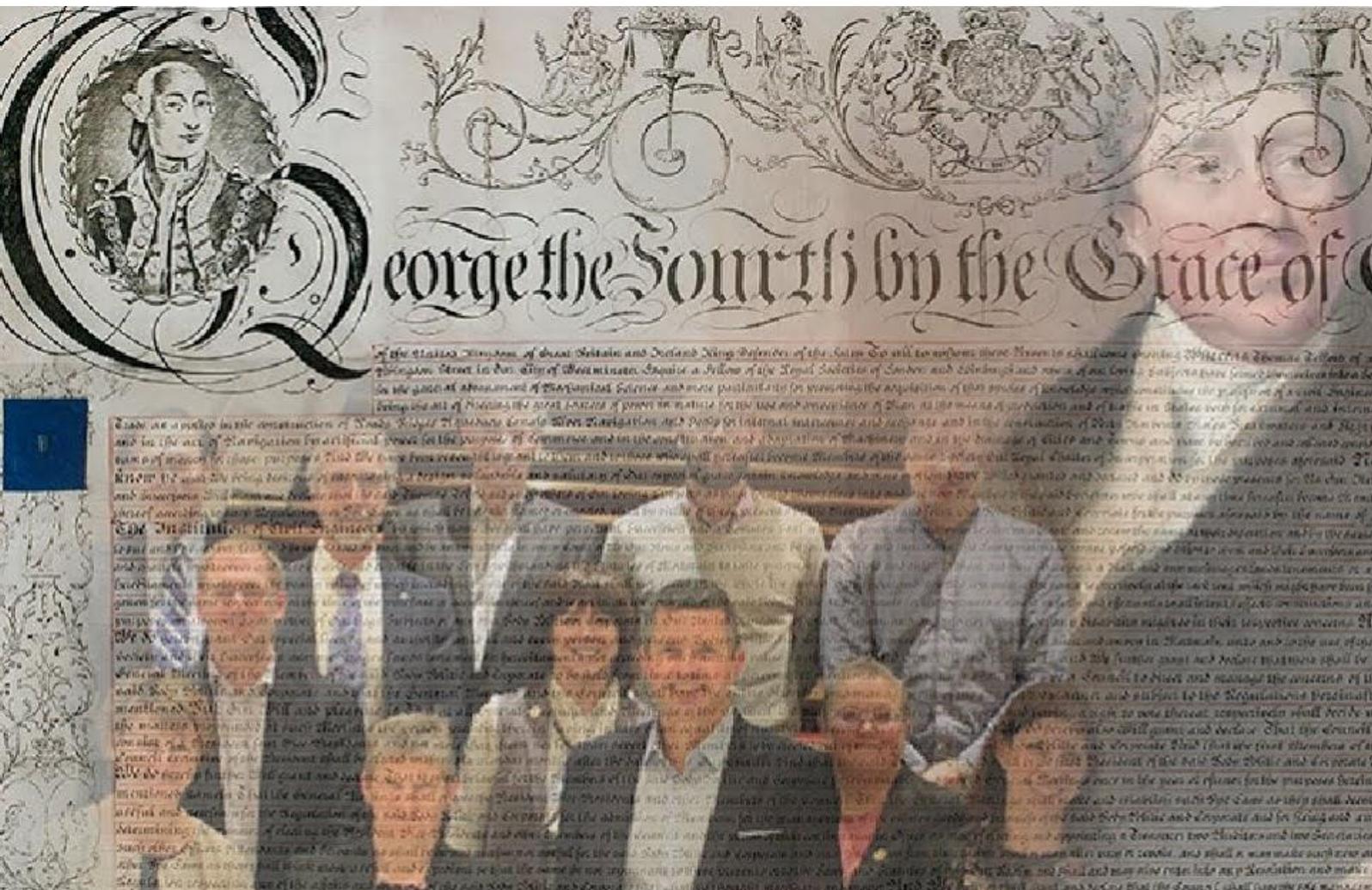


Presidential Commission into ICE Governance

Interim Report for Consultation

Volume 0 – Summary Report

August 2019



Summary Interim Report

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 The Council of the Institution has set up a Presidential Commission into ICE Governance. 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.
- 1.4 This is the summary version of the Commission's Interim Report. It summarises the first two stages of the Commission's work: evidence-gathering and development of interim proposals. The report and its 19 Interim Findings have been unanimously endorsed by the Commission.
- 1.5 The Interim Report forms the basis for further consultation with ICE members, Trustee Board, Council and others, which the Commission will take into account in developing its Final Report.

2. About the Institution of Civil Engineers

- 2.1 The ICE is a professional membership body, relying heavily on its 92,000 civil engineer members, particularly those who actively engage in its activities.
- 2.2 The Institution is also a charity and, as with all charities, it 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.
- 2.3 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.
- 2.4 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.
- 2.5 In summary, the Institution's top-level governance arrangements comprise:
 - a Trustee Board of 12 members, responsible for governance decisions, where the board and individual trustees take collective responsibility; and
 - a 38-member 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.
- 2.6 These governance arrangements were introduced during 2018. 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. While consideration of that process is not within the Commission's remit, it is important to understand the context.

- 2.7 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 a Special General Meeting, 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.
- 2.8 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.
- 2.9 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; this occurred on 6 November 2018. 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 The ICE Council established a Presidential Commission into ICE Governance to undertake the review, in line with resolutions passed at the SGM.
- 3.2 The Commission has ten members who reflect the diverse nature of the Institution and include a number of external members with strong experience of governance.
- 3.3 The Commission's Terms of Reference 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.

3.4 The Commission is undertaking its work in three stages:

Stage 1: Consult widely on the key principles and issues for the good governance of an Institution like ICE. Receive evidence and submissions from ICE members and stakeholders, hold discussions with most of the main ICE Boards and Committees, consult the Specialist Knowledge Societies, and review the governance of comparator organisations.

Stage 2: Develop Options for Future ICE Governance. The Commission will consider the key issues identified, and evidence gathered, during Stage 1 and look at the options for future governance of the ICE.

Stage 3: Consult and Report on Future Options. The Commission will publish, and consult widely on, an Interim Report setting out the emerging positions and options. It will take account of the feedback and finalise its recommendations to the Council and Trustee Board towards the end of 2019.

3.5 The Commission has tried hard to communicate effectively with ICE members, in line with our Terms of Reference, through a dedicated web page prominently linked on the ICE home page and in seven emails to all ICE members, including one directly from the Chair as well as a Viewpoint column in the February issue of New Civil Engineer.

4. Gathering Information and Evidence

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

4.2 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 the communications noted above and a consultation pack on the webpage;
- holding facilitated workshops with most of the main ICE boards and committees using the consultation pack to stimulate debate;
- seeking the views of the ICE's 15 Specialist Knowledge Societies; and
- researching the governance arrangements of 9 comparator Institutions in engineering and the built environment.

4.3 Our Stage 1 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.

5. ICE's Top-Level Governance Structure

- 5.1 The Commission has considered from first principles the fundamental issue of the 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?
- 5.2 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. Although the Council was asked to approve all major decisions, in practice the Executive Board was the de facto decision-making body. 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.
- 5.3 However, 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. 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.
- 5.4 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.
- 5.5 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.
- 5.6 To assist with considering this strategic issue from first principles, the Commission took advice from two specialists in trustee governance – one a former Charity Commissioner and the other the Vice- Chair of The Association of Charitable Organisations. The advice covered:
- the preferred size of a trustee board to govern effectively;
 - ensuring the Trustee Board has the range of skills needed to carry out the its work;
 - the need for all trustees to be able to make an effective contribution to the debate; and

- the fundamental principle that trustees are individually and collectively responsible for the decisions of the trustee board - the larger the Trustee Board, the more difficult it is to uphold this fundamental principle.
- 5.7 The Commission found 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 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); and
 - to benefit from the advice of the larger, representative Council on strategic issues facing the profession and the Institution.
- 5.8 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).
- 5.9 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 were:
- 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.
- 5.10 These are important points, 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.
- 5.11 On the question of representation, the Commission explored with an independent trustee governance specialist and former Charity Commissioner (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.
- 5.12 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 interests. The Commission is therefore 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.
- 5.13 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 considering the balance, composition and method of appointing the Trustee Board).
- 5.14 The Commission then tested this proposition against guidance from Charity regulators and the governance arrangements of comparator organisations.
- 5.15 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 says that 'a board of at least five, but no more than 12 trustees is typically considered good practice'. The Code is endorsed and supported by the Charity Commission for England and Wales (the Charity Commission), which encourages all Charities to read, follow and apply it, proportionate to their charity. 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 unmanageable'.
- 5.16 The proposition of a compact Trustee Board of around 12 members with a larger, mainly advisory, Council is also largely in line with the nine comparator bodies – professional institutions in the engineering and built environment sectors¹.
- 5.17 All of this evidence provides strong endorsement of the proposition that a compact trustee board of 12 or 13 members 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 a 25-member trustee Council (as suggested in one of the evidence sessions) would significantly exceed the guidance and current practice of other professional membership organisations.
- 5.18 Having considered the issues carefully, in depth, and from first principles, the Commission has concluded that:
- a compact Trustee Board of the size proposed in section 6:
 - 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.

¹ IChemE, IET, CIHT, IMechE, IStructE, CIWEM, RIBA, RTPI and RAEng

- 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.

5.19 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.

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 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.

6.2 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.

6.3 This principle 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 an increase to 13 could be justified if required to fill a skills gap.

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)

- 6.4 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%).
- 6.5 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 that the Trustee Board should have the power to dismiss a member for persistent non-attendance and other justifiable reasons.

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.

- 6.6 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.
- 6.7 In trustee governance, all trustees have collective responsibility for the decisions of the board and for the direction and leadership of the body.
- 6.8 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.

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.

- 6.9 Currently, there is provision for one member of the Trustee Board to be co-opted 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.
- 6.10 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.
- 6.11 Some trustee and charity boards reserve the right to nominate someone who is not a member, 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.

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.

6.12 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.

7. Method of Election to the Trustee Board

7.1 In 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.

7.2 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

Applications to serve as a trustee are invited from the ICE membership. Any member may stand regardless of their skills or experience. All voting members of the ICE 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.

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

The Trustee Board reviews its composition in terms of skills, knowledge, experience and diversity (a key responsibility of Trustees as recommended by the Charity Governance Code). For each position available, the Trustee Board identifies a candidate profile 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 Regions or International Areas). 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 voting members of the ICE are entitled to vote for the candidate of their choice. The candidate who receives the highest number of votes for each vacancy is elected.

Option C: Election of Council members by the Council

In this option, the Trustee Board reviews its composition in terms of skills, knowledge, experience and diversity (a key responsibility of Trustees as recommended by the Charity Governance Code). For each position available, the Trustee Board identifies a candidate profile 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 the 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.

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

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.

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

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

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

- 7.3.1 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 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. For these reasons, the Commission does not recommend Option A.
- 7.3.2 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.
- 7.3.3 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.

7.3.4 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.

7.4 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.

7.5 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.

7.6 Voting Rights for Graduate Members

7.6.1 Currently, Graduate members may only vote to elect the three Graduate Members of Council. In evidence, GSNet and the Graduates on Council advocated that aspiring members should be included in membership ballots.

7.6.2 An alternative view is that, if these are aspiring members, then there must be something to aspire to. That aspiration is professionally qualified membership of the Institution, which comes with the privilege of voting rights.

7.6.3 These are significant issues but are outside the Commission's Terms of Reference; however, 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.

8. The Nomination Committee

8.1 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. Nominations made by NomCo, if endorsed by the Trustee Board, are then passed to the Council for approval.

8.2 The practice of identifying and considering individuals is clearly sensitive and confidential. However, the Commission was impressed with the degree of transparency offered by the Chair of NomCo in his evidence, which we have published with his agreement.

- 8.3 Given the necessary confidentiality, any NomCo 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; and
 - adopting rigorous processes, balancing necessary confidentiality with appropriate transparency.
- 8.4 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.
- 8.5 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.
- 8.6 The Commission believes it is right that a majority of the 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 appropriate that the NomCo should include the President and Senior Vice President. There is also merit in having some members of NomCo who are ICE members but not necessarily Council members, given that some Council members may not be able to serve (perhaps because they are candidates for nomination) and to ensure the widest possible knowledge of candidates outside the current governance structures.
- 8.7 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.
- 8.8 Accordingly, the Commission makes the following 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.

8.9 In addition, the Commission makes several recommendations in relation to the NomCo process:

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.

8.10 The Commission recognises the importance of the Institution's Disciplinary Board and Professional Conduct Panel and makes the following recommendation for appointments to those bodies:

Interim Finding 8

The Commission recommends that NomCo makes the nomination to fill any vacancy in the Chair of the Disciplinary Board and the 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 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.

9.2 In most of the nine comparator bodies, the President chairs the Trustee Board. However, three 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.

9.3 There are three principal options for chairing the Trustee Board:

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

9.4.1 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.

9.4.2 In Option A the President chairs both the Trustee Board and the Council, leading the Institution and ensuring strong alignment between the two bodies. 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.

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

9.5.1 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.

9.5.2 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.

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

9.6.1 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.

- 9.6.2 The Board would elect one of the other trustees to serve as Chair for a period of, say, three years. The President would still be a member of the Trustee Board, although not its chair.
- 9.6.3 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.
- 9.7 The Commission recognises the significance of the roles of chairing the Trustee Board and Council. 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.

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 The NomCo canvases widely for nomination of candidates for Vice President (including those who may become President) and makes recommendations for the approval of the Trustee Board and the Council.
- 10.2 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. 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.
- 10.3 However, the Commission makes recommendations about two aspects of the Terms of Reference for the President, which were agreed by the Council in October 2015.

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.

- 10.4 ICE currently has seven Vice Presidents, the second highest number of any of the comparator bodies.
- 10.5 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.

- 10.6 The distinction between the three succeeding Vice Presidents and the four non-succeeding Vice Presidents has always been somewhat awkward; it is not made clear on the ICE website and many ICE members are unaware of it.
- 10.7 The current arrangement is somewhat in conflict with the key principle discussed in section 6 that all trustees should have equal levels of responsibility, with each trustee normally leading on a portfolio.

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 ICE's current high-level governance comprises:

- 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 to the Trustee Board and representing to the Trustee Board the views of the membership, but with some approval powers.

11.2 It is a combination with the potential to provide strong and effective governance, but it requires the roles and responsibilities to be crystal clear. The Council must not try 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). And the Trustee Board must recognise the value of the Council's advice and member representation, and nurture strong engagement with it.

11.3 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 those strategic issues of importance without the responsibility of trustee duties and obligations.

11.4 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.

11.5 The Commission believes there is 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.

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.

- 11.6 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.
- 11.7 Therefore, the Trustee Board's Terms of Reference rightly make it explicit that trustees must act ethically at all times.
- 11.8 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.
- 11.9 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 41 or its Terms of Reference.
- 11.10 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.

12. Transparency and Engagement

- 12.1 One of the key themes emerging from the Stage 1 consultation is the perception that ICE's governance arrangements have become remote from, and lack accountability to, ICE members. Whether this is a perception or reality does not really matter as perception is just as powerful.
- 12.2 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, together with a focus on transparency and engagement.
- 12.3 Transparency and openness are vital elements in building confidence in the Institution's governance. The Commission suggests the following, relatively straightforward, ways of improving transparency by publishing additional material in the relevant section of the ICE website:
- a plain English guide to the ICE's governance arrangements;
 - the Trustee Board ToR and the Council Constitution and ToR;
 - the comprehensive 'Governance Handbook' which is produced as an induction guide to new trustees;
 - the Trustee Board minutes once they are confirmed;
 - details of how an ICE member may apply to attend a Council meeting as an observer;
 - the President's calendar (past and forthcoming principal events) so that members may be aware of the President's considerable activities; and
 - an annual Transparency Report, perhaps as part of the Institution's Annual Report.

Interim Finding 14

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

- 12.4 One of the key tasks of a trustee board is engagement - understanding both the internal and external environment. 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.
- 12.5 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.

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.

- 12.6 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%).
- 12.7 This is not healthy. 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.

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 The Commission's Terms of Reference require us to consider how SGMs can be more accessible to voting members.
- 13.2 The By-Laws provide that the Trustee Board must call an SGM upon a requisition in writing of 60 Corporate Members (By-Law 68). The ICE threshold is at the lower end of the range of the comparator bodies; however, 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.

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.

- 13.3 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.
- 13.4 The By-Laws imply that ICE members who are not Voting Members may attend the SGM, but are silent on whether or not they may speak at the meeting.

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.

- 13.5 The By-Laws provide that votes at an SGM may only be cast in person at the meeting.
- 13.6 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.

- 13.7 Four of the comparator bodies allow electronic voting for voting members unable to attend an SGM (IChemE, IMechE, RIBA and RAEng).

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 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.
- 14.3 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. We believe we have fully covered the matters set out in our Terms of Reference.
- 14.4 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.
- 14.5 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 and effectively with the membership in advance of formally initiating any such changes.