

# A legislation and governance review conducted for Engineers and Geoscientists British Columbia

June 2018

## About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

We oversee the work of nine statutory bodies that regulate health professionals in the UK and social workers in England. We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise. We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards.

To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation.<sup>1</sup> We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce.

We are committed to being independent, impartial, fair, accessible and consistent. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).

## About Engineers and Geoscientists British Columbia

Engineers and Geoscientists British Columbia is the business name of the Association of Professional Engineers and Geoscientists of the Province of British Columbia. Engineers and Geoscientists BC regulates and governs these professions under the authority of the [Engineers and Geoscientists Act](#).

The association is charged with protecting the public interest by setting and maintaining high academic, experience, and professional practice standards for all 34,000 members. Individuals licensed by Engineers and Geoscientists BC are the only persons permitted by law to undertake and assume responsibility for engineering and geoscience projects in British Columbia.

Engineers and Geoscientists BC is a not-for-profit organisation governed by a council of elected members, licensees and government appointees. Council is accountable to the public through the Ministry of Advanced Education for both the governance and management of the association. More information about Engineers and Geoscientists BC is available at [www.egbc.ca](http://www.egbc.ca).

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<sup>1</sup> Professional Standards Authority (2015), *Right-touch regulation (revised)*. Available at: [www.professionalstandards.org.uk/policy-and-research/right-touch-regulation](http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation)

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# 1. Introduction

- 1.1 This report follows a request from Engineers and Geoscientists BC (EGBC) for a review of its legislation and governance. EGBC requested a review of its legislation, bylaws and the policies and procedures it has in place to support its governance, with an assessment of how these are supported or hindered by its legislation. It also asked for an assessment of its governance against our governance standards, adapted to reflect EGBC's legislation and structure. EGBC wanted to understand whether there were any gaps or issues in its legislation or governance arrangements that affected its ability to regulate effectively in the public interest.
- 1.2 Section 2 sets out the scope of this report and how we approached it. Section 3 describes the key points of EGBC's legislation and bylaws, and considers the effect they have on EGBC's policies and procedures. Section 4 sets out nine governance standards, adapted for EGBC, and assesses EGBC's performance against them. For each standard, we explain the evidence we considered and how we came to a view. Section 5 summarises our conclusions and recommendations.
- 1.3 The Professional Standards Authority (the Authority) undertakes annual performance reviews of the nine health and social care professional regulatory bodies in the UK as part of our statutory responsibilities. We publish the outcome of those reviews annually to the UK Parliament and the devolved administrations in Scotland, Wales and Northern Ireland. We have also, following requests from the organisations or governments concerned, conducted reviews for other regulatory organisations in the UK, Australia, Ireland, New Zealand, Ontario and British Columbia. The reports of these reviews are available on our website.<sup>2</sup>
- 1.4 We welcome EGBC's willingness to seek continuous improvement by undergoing a review. Although we have no statutory oversight of EGBC, we consider that there are mutual benefits in this review. There is a benefit to EGBC in having an independent assessment of its legislation and governance, and we have made recommendations which we believe will help it to be a more effective regulator. We have the opportunity to learn about different approaches to regulation in another jurisdiction and a different professional context. Our published report shares that learning with other regulators in the UK, Canada and internationally. There is value in the international community of regulators learning from each other and we are grateful to EGBC for its contribution in commissioning this report.
- 1.5 We thank the Council, committee members and staff of EGBC for their positive engagement with this review and their generosity with their time in meeting with us, responding to queries and providing information. Our ability to undertake this review depended on their openness and co-operation.

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<sup>2</sup> [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

## 2. The scope of the review and our methodology

- 2.1 Our review has two related elements: an assessment of EGBC's legislation, bylaws and associated policies and procedures, and how the legislative framework supports or hinders its effectiveness as a regulator; and an assessment of EGBC's governance against our Standards of Good Regulation, adapted as necessary.
- 2.2 To understand the legislative context, we reviewed the Engineers and Geoscientists Act, RSBC 1996 c. 116 (the Act) in detail, alongside published details of recent and proposed amendments. We reviewed EGBC's bylaws, policies and processes, including material about proposed changes to the bylaws. We spoke with EGBC councillors and senior staff to understand their experience of working within the current legal and policy framework.
- 2.3 To develop governance standards that were relevant to the context in which EGBC works, we drew on the governance standards we had used for a previous review of a regulator in British Columbia, the College of Registered Nurses of British Columbia (CRNBC).<sup>3</sup> In adapting these standards for EGBC, we took into account that it works in a different professional sector from CRNBC. We were satisfied that this did not significantly change the basic requirements for good organisational governance. Our assessment of EGBC's performance against the standards was based on the evidence we gathered from our review of relevant documents and our visit to EGBC's office.
- 2.4 In summary, the process for our review was as follows:
- We began discussions with EGBC about a review in autumn 2017, following a decision of EGBC's Council in September 2017
  - In February 2018 we agreed with EGBC to carry out the review. This included agreeing the scope of the review
  - In March 2018, EGBC arranged access for us to a secure area of its website. This meant we were able to review detailed documentation about EGBC's structure, policies and processes from our London office
  - We agreed governance standards for the review in early April 2018
  - We carried out a site visit to EGBC in Burnaby, British Columbia from 23 to 27 April 2018.
- 2.5 As part of our site visit and desktop review we:
- reviewed the Act and bylaws, and the published information about proposed amendments

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<sup>3</sup> Professional Standards Authority (2016), *A review conducted for the College of Registered Nurses of British Columbia*, available on our website: [www.professionalstandards.org.uk/docs/default-source/publications/special-review-report/a-review-conducted-for-the-college-of-registered-nurses-of-british-columbia-\(april-2015\).pdf?sfvrsn=49db7120\\_14](http://www.professionalstandards.org.uk/docs/default-source/publications/special-review-report/a-review-conducted-for-the-college-of-registered-nurses-of-british-columbia-(april-2015).pdf?sfvrsn=49db7120_14)

- reviewed policy and process documents provided by EGBC
- reviewed other material published through EGBC's website, including its latest Annual Report, reports of previous Annual General Meetings and information about elections to Council
- reviewed published material about previous Council meetings in December 2017 and February 2018
- listened to an audio recording of the February 2018 Council meeting
- reviewed information from a sample of previous committee meetings<sup>4</sup>
- met individually with the President, councillors (appointed and elected), Registrar and senior staff<sup>5</sup>
- observed a Council meeting and meetings of the Audit Committee, Executive Committee, Governance Committee, Investigation Committee, Practice Review Committee and Registration Committee.

2.6 We consider that the information we have reviewed, our observation of EGBC's work in practice and our discussions with councillors and staff have enabled us to reach a fair assessment in relation to both elements of our review. For some points of the report, we have relied on information we received from people we spoke to, although we sought to validate such accounts where possible. Overall, we are satisfied that our conclusions and recommendations are based on appropriate and credible evidence.

2.7 We have set out our approach to effective regulation in our paper *Right-touch regulation*.<sup>6</sup> Right-touch regulation means using only the regulatory force necessary to achieve the desired effect. It sees regulation as only one of many tools for ensuring safety and quality and therefore that it must be used judiciously. Professional regulation exists not to promote or protect the interests of professional groups but to enhance safety and protect the public. The general approach to regulation set out in that paper underlies our findings in this review.

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<sup>4</sup> The committee papers provided by EGBC were redacted where appropriate.

<sup>5</sup> Individual interviews with councillors other than the President were carried out by telephone.

<sup>6</sup> See footnote 1, above.

## 3. EGBC's legislation and bylaws

- 3.1 EGBC regulates professional engineering and geoscience in British Columbia. It has over 34,000 members, including student members, members-in-training, professional members and holders of limited licences,<sup>7</sup> serving a population of around 4.8 million.<sup>8</sup> Around 90 per cent of its members are in engineering.<sup>9</sup> EGBC is both the regulator and the professional association for engineering and geoscience; its dual mandate has significant consequences, which we discuss in more detail in the rest of this report.
- 3.2 Professional engineering and geoscience are regulated in Canada at the provincial level. To be permitted to practise as a professional engineer or geoscientist in British Columbia, it is necessary to be a member or licensee of EGBC.<sup>10</sup> Each Canadian province or territory has its own legislation and its own regulator(s). While EGBC regulates both engineering and geoscience, in some jurisdictions, such as Ontario and Quebec, engineers and geoscientists are regulated separately. The provincial regulators are members of national organisations, Engineers Canada<sup>11</sup> and/or Geoscientists Canada,<sup>12</sup> whose role includes coordinating the activities of their respective member organisations and promoting the professions.
- 3.3 The legal basis of EGBC's powers and duties is the Act. EGBC asked us to review the Act, and its bylaws, policies and procedures, to assess how the Act and the associated structures support or hinder its ability to be an effective regulator.
- 3.4 We reviewed the Act and EGBC's bylaws, as well as a range of its other policies and procedures. We also reviewed other information in the public domain about the Act and bylaws, including EGBC's proposals for amendments. We spoke with Council members and senior staff at EGBC. We also observed Council and committee meetings. This approach helped us to understand how the Act shapes EGBC's regulatory activities, and the challenges it faces as a result. The rest of this section sets out the findings of our review.

### An introduction to the Act

- 3.5 The first legislation regulating the practice of engineering in British Columbia was passed in 1920. We understand that the current Act is based on the

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<sup>7</sup> Generally, only citizens or permanent residents of Canada may become 'members' of EGBC according to the Act (section 13(1)). Section 13(4) allows others to obtain a limited licence, permitting them to practise engineering or geoscience within a particular field or for a set period of time.

<sup>8</sup> Statistics Canada (2017), *Population by year, by province and territory*. Available at: [www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo02a-eng.htm](http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo02a-eng.htm) [Accessed May 2018].

<sup>9</sup> EGBC (2017), *Annual Report 2016/17*, p18. Available at: [www.egbc.ca/getmedia/c707954c-6f74-4623-a10a-f866b326ed22/2016-2017-Annual-Report-Engineers-and-Geoscientists-BC.pdf.aspx](http://www.egbc.ca/getmedia/c707954c-6f74-4623-a10a-f866b326ed22/2016-2017-Annual-Report-Engineers-and-Geoscientists-BC.pdf.aspx)

<sup>10</sup> Individuals may be a member of more than one provincial regulator, allowing them to practise in different jurisdictions. There are arrangements in place to expedite registration with EGBC for engineers or geoscientists registered elsewhere in Canada.

<sup>11</sup> [www.engineerscanada.ca](http://www.engineerscanada.ca)

<sup>12</sup> [www.geoscientistscanada.ca](http://www.geoscientistscanada.ca)

original legislation that is now almost a hundred years old. The Act has been amended and updated at various points.

- 3.6 The table below outlines the structure and content of the Act. We have grouped sections of the Act together by themes. This is for illustrative purposes only, and does not imply that the themes we identified have any legal significance.

Sections	Theme
1-2	Definitions and exemptions
3-4.1	EGBC and its duties and objects
5-12	Council, meetings and bylaws
13-20	Requirements for admission
21-21.3	Annual fee
22-27	Prohibition of unregistered practice
28-39	Complaints, discipline and appeals
40-46	Miscellaneous

- 3.7 As the table suggests, the Act makes provision for EGBC's powers in relation to the key duties of a regulator:

- section 10(1) gives EGBC's Council the power to 'pass, alter and amend bylaws' in relation to 31 matters set out in subsections, including qualifications and other requirements for admission to the register, and establishing a code of ethics, practice guidelines, quality management programmes and professional development requirements
- section 13(1.1) sets out the evidence an applicant must provide to EGBC in support of an application for membership
- section 19 obliges the Registrar to keep a public register of members
- section 22 prohibits individuals who are not members or licensees of EGBC from practising or holding themselves out as professional engineers or geoscientists
- section 29 obliges EGBC to consider complaints it receives about members (including former members)
- section 33(2) sets out the sanctions EGBC may impose if it substantiates a complaint or reaches an agreed settlement with the member concerned.

- 3.8 Because the Act specifies EGBC's powers and responsibilities, it is necessary to amend the Act to make changes to EGBC's powers. It is not

unusual for regulators in statutory schemes to find their ability to be agile<sup>13</sup> constrained by the legislative framework. Amending legislation can take a long time, and may be subject to other governmental priorities.

- 3.9 In our review, we have identified a number of points where the Act could better enable EGBC to regulate transparently and effectively in the public interest. In making recommendations to EGBC about these matters, we acknowledge that it does not on its own have the power to change the Act; indeed, as we discuss at paragraphs 3.20 to 3.25 below, at present EGBC has only limited powers to change its own bylaws. We encourage it to reflect on the issues we have identified and to consider whether there are improvements it could make within the existing legal framework, as well as engaging with government and other stakeholders, including the public, about the desirability of changes to the Act.

### The dual mandate

- 3.10 The Act sets out EGBC's duties and objects at section 4.1:
- (1) It is the duty of the association:
    - (a) To uphold and protect the public interest respecting the practice of professional engineering and the practice of professional geoscience,
    - (b) To exercise its powers and functions, and perform its duties, under this Act, and
    - (c) To enforce this Act.
  - (2) The association has the following objects:
    - (a) Subject to subsection (1), to uphold and protect the interests of its members and licensees;
    - (b) To establish, maintain and enforce standards for the qualifications and practice of its members and licensees;
    - (c) To promote the professions of professional engineering and professional geoscience.
- 3.11 Under the Act, EGBC is both a regulator, protecting the public interest, and a professional association, promoting the interests of its members and the professions. This dual mandate is a fundamental characteristic of the organisation, and it has far-reaching implications for EGBC which we discuss in more detail in the rest of this report.
- 3.12 It is worth noting that over recent years, the regulatory and representative functions of many professions have been legally separated in many jurisdictions. This has happened with the statutory health and care regulators we oversee in the UK, with one exception.<sup>14</sup>
- 3.13 Models for professional regulation vary across Canada. In some provinces, there are separate organisations carrying out regulatory and representative

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<sup>13</sup> Agility is one of our principles of good regulation. Agility in regulation means looking forward to anticipate change rather than looking back to prevent the last crisis from happening again. *Right-touch regulation* includes an introduction to the principles of good regulation.

<sup>14</sup> The Pharmaceutical Society of Northern Ireland retains both regulatory and representative functions. However, it has devolved its representative functions to an arm's-length Pharmacy Forum.

functions in respect of professional engineering.<sup>15</sup> We have seen that a similar separation of functions has taken place in healthcare regulators in British Columbia.<sup>16</sup> EGBC's dual mandate means that it has a wider range of responsibilities than an organisation with a solely regulatory remit.

- 3.14 Section 4.1 of the Act makes clear that EGBC's public protection role is paramount. However, as we discuss below, a number of other provisions of the Act are more consistent with a professional membership organisation than a regulator. There is a tension in the Act between EGBC's regulatory and representative roles, which hinders its ability to regulate in the public interest.
- 3.15 We note that section 4.1 was added to the Act only quite recently, taking effect in 2008.<sup>17</sup> The fact that confirmation of EGBC's primary duty to the public had to be added to the Act rather than being present from the outset illustrates the gradual process by which the Act is changing to emphasise EGBC's public protection role as a regulator. The evidence we saw demonstrated that EGBC is committed to regulating in the public interest. But there is still some way to go before its legal framework fully supports it in doing so.

### Amending the Act

- 3.16 EGBC has identified a number of amendments to the Act, which it says will help bring it up to date.<sup>18</sup> The Act was most recently amended in 2012, following requests from EGBC. We understand that it has been in contact with the provincial government about the latest round of amendments to the Act since at least 2015. This demonstrates the constraining effect of the need for legislative amendments to implement changes to everyday working practices.
- 3.17 The majority of EGBC's proposed changes to the Act seek to improve its ability to regulate effectively and transparently. We discuss some of them elsewhere in our report. We agree that it is appropriate for EGBC to pursue amendments to the Act to help it discharge its responsibilities more effectively. We have also noted some instances where it has sought to innovate within the existing legal framework.<sup>19</sup> We commend EGBC's efforts to secure amendments to the Act to give it the powers it needs to regulate effectively in the public interest.

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<sup>15</sup> For example, in Ontario, Professional Engineers Ontario is the regulator and the Ontario Society of Professional Engineers is the professional association.

<sup>16</sup> We noted in our 2016 review of CRNBC that it had recently made the transition from being a representative organisation.

<sup>17</sup> *Engineers and Geoscientists Act 1996, Table of Legislative Changes (2<sup>nd</sup> edition)*. Available at: [www.bclaws.ca/civix/document/id/complete/statreg/e2tlc96116](http://www.bclaws.ca/civix/document/id/complete/statreg/e2tlc96116) [Accessed April 2018]. We understand that prior to 2008 EGBC's bylaws already included a code of ethics which required members to act in the public interest.

<sup>18</sup> More information about the changes EGBC is proposing to the Act can be found on its website: [www.egbc.ca/About/Governance/Proposed-Amendments-to-the-Engineers-and-Geoscient](http://www.egbc.ca/About/Governance/Proposed-Amendments-to-the-Engineers-and-Geoscient) [Accessed April 2018].

<sup>19</sup> See, for example, paragraphs 3.89 to 3.91.

### The Act and the bylaws

- 3.18 The Act gives EGBC powers to make and amend bylaws. As we noted above, section 10(1) of the Act has 31 subsections specifying the areas in which EGBC may make bylaws. This includes routine areas of its work. We noted that changes have been made to section 10(1) of the Act at various times, as it was decided that EGBC needed powers to make bylaws in new areas:
- Sections 10(1)(e.1) and (e.2) took effect in May 2002. They gave EGBC additional powers to make bylaws in relation to professional liability insurance
  - Sections 10(1)(k.1) to (k.3) took effect in March 2008. They gave EGBC the power to make bylaws in relation to specialised areas of engineering and geoscience
  - Sections 10(1)(m.1) and (m.2) took effect in May 2008. They gave EGBC the power to make bylaws to establish professional development requirements and an alternative complaint resolution process
  - Five new subsections took effect in June 2012, including section 10(1)(i.1), which gave EGBC the power to make bylaws to establish ‘standards of practice or a code of conduct for members and licensees’.<sup>20</sup>
- 3.19 This illustrates one of the problems caused by the prescriptive wording of the Act. Issues were identified where EGBC needed powers to act in order to discharge its duties but the Act needed to be changed before EGBC could make bylaws to address them. New bylaws then needed to be developed, agreed and ratified (see below). In our view, this stepped process must have an impact on EGBC’s agility, particularly in view of the time it can take to make changes to legislation. It is not clear to us that there would be a significant risk to public protection if the Act was less prescriptive about EGBC’s powers to make bylaws. We recommend that EGBC consider seeking amendments to the Act to simplify its powers to make and amend bylaws.
- 3.20 Even where EGBC has the legal power to make or change bylaws, the Act imposes further restrictions. EGBC must ballot members and licensees about any proposed new bylaw, and ‘A bylaw does not come into force unless ratified by at least 2/3 of the votes cast’.<sup>21</sup> The provincial government also has the power to disallow a bylaw.<sup>22</sup>
- 3.21 In our view, the requirement for members and licensees to approve a bylaw before it can be ratified is more consistent with a professional representative organisation than with a regulator charged with protecting the public. We consider that this is inconsistent with section 4.1 of the Act, which explicitly subordinates members’ interests to those of the public.

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<sup>20</sup> See footnote 17 above.

<sup>21</sup> Section 11(1).

<sup>22</sup> Section 11(3) says that ‘A bylaw may be disallowed by the Lieutenant Governor in Council within 45 days after the filing of it’.

- 3.22 While we agree that it is important for a regulator to engage with its registrants about any changes to standards and requirements, it is unsatisfactory for a regulator's ability to exercise its legal powers to depend on registrants' consent. This has the effect of hindering EGBC's ability to exercise its legal powers and discharge its duties. It also effectively delegates to individual members and licensees the responsibility to weigh up their personal interests against their understanding of the requirements of the public interest. This introduces a clear conflict of interests. In our view, it should be part of EGBC's role as the regulator to assess and determine what regulatory measures the public interest requires.
- 3.23 The issue of mandatory continuing professional development (CPD) illustrates some of the problems arising from section 11 of the Act. As we have seen, EGBC gained the legal power to make bylaws about CPD requirements ten years ago. However, it has been unable to introduce mandatory CPD because the bylaw has not been ratified by members. We understand that there have been two ballots of members and licensees about introducing a bylaw about mandatory CPD. In neither case was the two-thirds threshold reached. EGBC has continued to consult and engage with members and licensees about the need for CPD and the proposed scheme. It has also introduced an optional CPD programme.
- 3.24 It was not part of the scope of our review to evaluate EGBC's proposed CPD scheme. We note, though, that EGBC considers that mandatory CPD is necessary in the public interest, and it has been unable to introduce it because it has been unable to secure the required two-thirds of votes in favour in a ballot. Thus the Act has hindered its ability to regulate effectively. Moreover, mandatory CPD schemes are generally considered good practice in regulation. For example, our Standards of Good Regulation require the regulators we oversee to have a system which ensures that registrants maintain the standards required to stay fit to practise. We commend EGBC's efforts to introduce a mandatory CPD programme as being consistent with good practice in regulation.
- 3.25 One of the changes EGBC is seeking to the Act is to remove the requirement for bylaw ratification by members with regard to matters relating to professional practice and public safety. For the reasons outlined above, we agree that removing the requirement for bylaw ratification from the Act would help EGBC be a more effective regulator in the public interest. Accordingly, we commend the steps EGBC is taking to unfetter its ability to make and amend bylaws in the public interest.
- 3.26 We note that there appears to be some precedent for similar changes to the Act. Sections 21.1 to 21.3 were added to the Act in 2008. They give Council the power to set annual fees for members by resolution. Previously, the power to set the annual fee was contained in the bylaws. This meant that Council could not change the annual fee without two-thirds of votes in favour in a ballot of members and licensees. We understand that the change to the Act followed numerous unsuccessful attempts by EGBC to increase the membership fee by ballot.

- 3.27 This change to the Act recognised that members and licensees had a conflict of interests in deciding whether to ratify some bylaws. In this instance, members and licensees' financial interest in keeping membership fees low conflicted with EGBC's need to be able to determine and secure the resources required for its regulatory activities. In our view, similar considerations apply in relation to mandatory CPD.
- 3.28 At the time of our report, EGBC is proposing to amend some of its bylaws. This follows a legal challenge to its bylaw about life membership. Members were eligible to apply for life membership (which, among other things, exempted them from the annual membership fee) if they were 70 or older, had been practising for 35 years or more and had been a member in good standing for 20 years or more. It was identified that the life membership bylaw was likely to be incompatible with the BC Human Rights Code,<sup>23</sup> which prohibits discrimination on the grounds of age.
- 3.29 Even in these circumstances, EGBC cannot amend its bylaws unless members and licensees ratify the change. This means that members and licensees are put in the invidious position of being asked to vote on whether to maintain a situation which appears to be unlawful. Unless at least two-thirds of the members and licensees who vote in the ballot endorse the change, EGBC will be caught between contradictory legal obligations. The BC Human Rights Code will likely prohibit it from continuing to grant life memberships under the current bylaw, while the Act will prohibit it from changing the bylaw.
- 3.30 Council considered a proposal to amend the relevant bylaws at the meeting we attended. Those discussions reflected the political reality of the need to obtain members' approval in order to make changes to the bylaws. The requirement for ratification by a two-thirds majority means that the balance of power is with members and licensees: EGBC cannot proceed without their approval, and so it engages with them from a position of weakness. Removing the requirement for member ratification would change the nature of EGBC's engagement with members. It would still be appropriate and desirable for EGBC to consult and engage with its members and licensees about proposed bylaw changes. However, it would be easier for EGBC to focus on what action it needs to take to achieve the necessary regulatory outcomes and then determine the appropriate engagement with members and licensees.

### **Council**

- 3.31 The Act says that Council is to exercise EGBC's legal powers.<sup>24</sup> It sets out a variety of requirements for Council. The bylaws contain further requirements.

### ***Council size and composition***

- 3.32 According to the Act, Council must have at least 15 members, and could have considerably more. Council must comprise:

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<sup>23</sup> Available at: [www.bclaws.ca/Recon/document/ID/freeside/00\\_96210\\_01](http://www.bclaws.ca/Recon/document/ID/freeside/00_96210_01) [Accessed May 2018].

<sup>24</sup> Section 8(1).

- a President
- at least one Vice-President – EGBC currently has one Vice-President
- the immediate past President
- four councillors who are not members of EGBC, appointed by the provincial government
- at least eight councillors elected by members and licensees – EGBC’s bylaws specify that there should be 10 elected members
- a geoscientist and a member of a relevant university faculty – if none are elected, Council must appoint one.

3.33 EGBC’s Council currently has 17 members. This is large for a board to be effective. In 2011 we published advice about board size and effectiveness.<sup>25</sup> Our advice was based on our experience of overseeing UK health and care regulators, and took account of relevant management literature. It concluded that ‘There is no single ‘right’ answer, but our experience suggests that a council of around eight to 12 members is likely to be most conducive to effectiveness’.

3.34 We note that there are differences between EGBC and the UK healthcare regulators who were the focus of our 2011 report. For one thing, EGBC’s dual mandate means that Council has a range of responsibilities in addition to the regulation of the professions. We also acknowledge that staff and councillors told us that it would be difficult for Council to discharge all its duties if it were any smaller. This might restrict the breadth of experience it contained, and would limit the overall capacity of councillors, particularly as elected councillors serve as unpaid volunteers and serve on numerous committees. As discussed at paragraph 4.63 below, we consider that EGBC may wish to review the involvement of councillors in operational committees and task forces. It may be that a smaller Council would be feasible only in the context of wider changes in EGBC’s structure. We recommend that EGBC review the size of Council to promote its ability to carry out its functions effectively.<sup>26</sup>

### ***Council elections***

3.35 The Act requires annual elections for the President, Vice-President and councillors. Half of the elected councillors are elected each year. Councillors serve two-year terms. The Act does not say whether councillors may be re-elected or reappointed; in practice, EGBC allows this.

3.36 Under the Act, the President and Vice-President(s) change every year, although the outgoing President has a further year on Council in the capacity of immediate past President. Up to seven elected councillors may change

<sup>25</sup> Professional Standards Authority (2011), *Board size and effectiveness: advice to the Department of Health regarding health professional regulators*. Available at: [www.professionalstandards.org.uk/docs/default-source/publications/advice-to-ministers/board-size-and-effectiveness-2011.pdf?sfvrsn=d1c77f20\\_12](http://www.professionalstandards.org.uk/docs/default-source/publications/advice-to-ministers/board-size-and-effectiveness-2011.pdf?sfvrsn=d1c77f20_12) [Accessed May 2018].

<sup>26</sup> See also our recommendation at paragraph 3.59 below.

each year.<sup>27</sup> Six councillors were elected in the 2017/18 election, none of whom had served on Council before, although several had taken part in other committees and initiatives.

- 3.37 It will be seen that EGBC has little control over the composition of its Council. Moreover, as councillors are elected individually, there is little opportunity to ensure an appropriate mix of skills. This is particularly important given the variety of roles councillors fulfil. We acknowledge that the relatively large size of Council may mitigate to some extent the risk that it will lack necessary skills and experience. This, however, is not guaranteed.
- 3.38 EGBC has some measures in place to assure the quality of candidates for Council posts. Its bylaws provide for a Nominating Committee, chaired by the immediate past President, to put forward suitable candidates for election. Only members or licensees with experience of serving on council are eligible to be nominated for the roles of President or Vice-President by the Nominating Committee.<sup>28</sup> Staff told us that a key part of the Nominating Committee members' role is to use their professional networks to identify and reach out to potential candidates. The staff and councillors we spoke to have confidence in the Nominating Committee's ability to identify suitable candidates for these roles.
- 3.39 However, the bylaws also allow candidates to be nominated for President, Vice-President or councillor by 25 of their fellow members or licensees. There is no experience requirement for a candidate nominated in this way. Some recent elections have included candidates for President and Vice-President who had limited relevant experience, such as candidates with no prior experience of serving on EGBC's Council or committees. There is a risk of significant disruption to the organisation's effectiveness if a candidate lacking relevant experience were to be elected President or Vice-President.
- 3.40 The annual election cycle can be challenging for a number of other reasons:
- New councillors need time to settle into the role. Councillors told us it can take two or three Council meetings for a councillor to feel able to play a full part; a frequent changeover of councillors is therefore inefficient
  - Councillors may be elected on the basis of a protest vote or in relation to a single issue. This can be disruptive, as a councillor focusing on a single issue is less able to contribute to Council's overall public protection and fiduciary responsibilities and corporate governance
  - There is uncertainty for staff and councillors about who will be on Council pending the election results.
- 3.41 We also noted that being subject to election by members could unduly influence councillors' behaviour and decision-making. A councillor who was seeking re-election might be less inclined to support measures that were likely to be unpopular with members, even if these were necessary for public

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<sup>27</sup> Five councillor posts will be up for election under the terms of the Act. In addition, if a serving councillor is elected President or Vice-President, it will be necessary to fill their seat on Council.

<sup>28</sup> Bylaw 3(b) says that to be eligible for nomination by the Nominating Committee, candidates for President must have at least two years' experience of serving on Council; candidates for Vice-President must have at least a year.

protection or for the good stewardship of the organisation. As we noted at paragraph 3.30 above, we saw that councillors' perception of members' views can influence discussions at Council.

- 3.42 If a group of members objected to a Council decision, the Act makes it easy for them to put forward one or more candidates for election on a protest vote, which has the potential to disrupt Council's performance. Similarly, the Act says that Council must call a general meeting of the association on the written request of 25 members. Twenty-five members or licensees is less than one tenth of one per cent of EGBC's current membership. This is an absurdly small number, particularly compared with the two thirds of members voting required to approve a bylaw.
- 3.43 It is reasonable that Council should be accountable to stakeholders, including the public and members and licensees, for its decisions. But the current system of elections contains few safeguards to ensure that Council is able to function effectively. Members' ability to stand for election or force a general meeting with the backing of a small number of their peers is more consistent with a professional representative organisation than a regulator. We recommend that EGBC review the options for achieving a more appropriate balance between ensuring Council's ability to lead the organisation and enabling members' participation. These options might include increasing to a more proportionate threshold the number of members' signatures required for a nomination or to call a general meeting.
- 3.44 Overall, the system of annual elections to Council as mandated by the Act gives rise to a number of potential problems. We also considered whether the annual election cycle might disrupt Council's ability to provide strategic leadership for the organisation. This is particularly relevant because EGBC's strategic planning is based on a three-year cycle. The annual election cycle means that there will be a number of changes of President, Vice-President and councillors within the lifetime of each strategic plan. In our view, that could make it more difficult for Council to maintain continuity or effective ownership of longer term strategy. We acknowledge, however, that EGBC told us that in practice it has not experienced problems of this sort, as the majority of councillors remain unchanged from one year to the next, and there is usually a degree of continuity in the President, past President and Vice-President.
- 3.45 We understand that EGBC has established a Nomination and Elections Review Task Force to review the issues around the election process, including the possibility of increasing councillors' terms to promote continuity. We commend EGBC's review of these matters, and we encourage it to prioritise measures which will assist Council in providing effective strategic leadership for the organisation.

### *The President*

- 3.46 The Act says that there must be a President, who will chair meetings of the association and Council. The President 'votes only when the votes of the members are equally divided' – that is, a casting vote only, not, as would be

more usual, their own vote plus a casting vote.<sup>29</sup> We note that this means the President effectively has no vote in relation to those matters which require a resolution by two-thirds of Council.<sup>30</sup> Strikingly, the Act does not require that the President should be a member or licensee of EGBC. However, the bylaws specify that only members or licensees are eligible for election as President.<sup>31</sup>

- 3.47 Relatively few of the President's duties are set in the Act or bylaws. In practice, the President has a wide range of other duties. The President:
- represents EGBC to internal and external stakeholders, such as members, the public, government and other organisations
  - chairs EGBC's Executive Committee<sup>32</sup>
  - oversees the Chief Executive, and liaises closely with them.
- 3.48 We understand that a recent President estimated the time commitment involved for the year to be in the region of 800 hours, excluding time spent on telephone calls. Clearly, it can be difficult for a volunteer to combine the duties of President with their other professional responsibilities. This may limit the pool of candidates who have both the necessary skills and experience and the capacity to undertake the role.
- 3.49 We noted above the potential for disruption to Council's performance arising from the annual election cycle. Given the President's role as the figurehead of the organisation, it is particularly important that they are able to perform their role effectively. The risks of inconsistency and inefficiency associated with the annual election would have a greater impact in relation to the President.
- 3.50 We considered whether changing President annually, as required by the Act, was likely to hinder Council's ability to provide strategic leadership of EGBC. As we noted at paragraph 3.44, there will be changes of President during the lifetime of each three-year strategic plan. However, in practice, a President put forward by the Nominating Committee will often have served on Council for the two years preceding their presidency.<sup>33</sup> They will have a further year on Council as immediate past President. These factors promote a degree of continuity. However, there remains a risk of disruption associated with the annual change of presidency.

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<sup>29</sup> Section 6(3).

<sup>30</sup> Such as setting the membership fee under section 21(1) of the Act, or under EGBC's proposal to amend the Act to allow councillors to be removed for misconduct (see paragraphs 3.60 to 3.63).

<sup>31</sup> Bylaw 3(b) says that the Nominating Committee may only nominate for President a member or licensee with two or more years' experience on Council; bylaw 3(e) says that 'Nominations of candidates, who are members in good standing, for president [...] may also be made in writing by any 25 or more members or limited licensees'.

<sup>32</sup> The Executive Committee's terms of reference explain that its role is to act on Council's behalf and report to it on matters that require action between Council meetings, as well as specific responsibilities in relation to external appointments and financial and human resources matters, including the performance management of the Chief Executive.

<sup>33</sup> The bylaws require two years of experience on Council but do not specify that these must immediately precede election as President; in practice, though, they will often do so. The current President told us this is her fourth year on Council.

- 3.51 We understand that EGBC has considered whether it would be desirable to extend the President's term of office. However, it would be even more difficult to find candidates who could volunteer for a longer period. Additionally, as discussed above, the President is directly elected by members and there are limited safeguards to ensure that only well-qualified candidates are eligible. In that context, increasing the President's term of office would increase the potential impact if an unsuitable candidate were elected.
- 3.52 The existing framework of the Act and bylaws poses a number of challenges in relation to the President's role. These are not straightforward to overcome. We understand that EGBC's Council has previously considered whether the post of President should be remunerated rather than voluntary. This would be normal in a number of other regulatory regimes. Another option would be to reconsider the scope of the President's duties, as the majority of these are not statutory requirements. It would also be possible, under the Act, to appoint another Vice-President to assist. None of these measures would, on their own, resolve all the issues EGBC's legal framework presents in relation to the President's role (such as, for example, the risk of disruption if a candidate without relevant experience were elected). We recommend that EGBC consider ways to promote continuity of strategic leadership within that framework. We note that the President has responsibilities in relation to both elements of the dual mandate. We would invite EGBC to prioritise the effective performance of those elements of the President's role which bear on its regulatory duties.

### *Publicly-appointed councillors*

- 3.53 As outlined above, the Act says that Council includes four non-member councillors appointed by the provincial government. Four non-member councillors out of 17 is a relatively small proportion. By way of comparison, our 2011 advice on board size and effectiveness started from the premise that there would be parity between registrant and non-registrant members, as this is the norm among the UK health and care regulators we oversee and in the Australian model of professional regulation.
- 3.54 The appointment process for councillors is managed by a government agency, the Crown Agencies and Board Resourcing Office (CABRO).<sup>34</sup> CABRO publishes information and guidance about the appointment process and general good practice in governance. EGBC's appointed councillors had to undergo a selection process managed by CABRO in order to be eligible for appointment. This included, for example, confirming that they had relevant experience. Most of EGBC's appointed councillors had experience of serving on other boards before they were appointed to Council.
- 3.55 We spoke to staff and councillors to understand the difference, if any, between the respective roles of elected and appointed councillors. All the councillors we spoke to, whether elected or appointed, were clear that their primary responsibility is to protect the public. Councillors and staff were clear

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<sup>34</sup> More information is available on CABRO's website: [www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/central-government-agencies/crown-agencies-and-board-resourcing-office](http://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/central-government-agencies/crown-agencies-and-board-resourcing-office).

that this mandate was the same for both elected and appointed councillors. Nevertheless, staff told us that they particularly valued the external perspective offered by appointed councillors, and the consistently high calibre of candidates for these roles.

- 3.56 We also note that decisions to appoint councillors can be made with knowledge of the context and Council's needs (unlike elected councillors, where skill mix is not taken into account). So, for example, it is usual for some of the public appointees to have a professional background in accountancy. When an appointed councillor comes to the end of their term, the appointment process provides a mechanism to identify an appropriate candidate to replace them. It is also possible for appointed councillors to serve additional terms. Although EGBC does not control these processes, they do not depend on election results and are therefore easier to predict and to manage.
- 3.57 We consider that there would be numerous benefits from increasing the number of publicly-appointed councillors on EGBC's Council. The effect of the advantages identified here could be increased: more appointed councillors could bring a wider range of external perspectives to Council, and more appointments would be subject to an independent, external vetting process.
- 3.58 There may also be further benefits from increasing the proportion of publicly-appointed councillors on Council. We consider that increasing the number and proportion of publicly-appointed councillors would help Council manage the transition around elections, because there would be a bigger core of councillors whose continued tenure was assured. This would make it less likely that Council's ability to provide strategic leadership for EGBC was compromised by a change of councillors.
- 3.59 We recognise that EGBC cannot change the number of publicly-appointed councillors unless the Act is amended. We recommend that EGBC review the options for increasing the proportion of appointed councillors, including, for example, how many appointed councillors would be optimal and whether it would be appropriate to reduce the number of elected councillors at the same time.<sup>35</sup> This review should enable it to decide whether and how to proceed in seeking relevant amendments to the Act.

### ***Council code of conduct***

- 3.60 The Act provides that a councillor may be replaced if they die, resign or become incapable of acting.<sup>36</sup> There is no provision for a councillor to be removed on any other grounds, such as misconduct. EGBC has proposed to amend the Act to introduce this power. We agree that in the interest of public protection and good governance, it is important to have a fair and transparent process for taking action if a councillor's conduct is not compatible with the organisation's values or the seven principles of public life.<sup>37</sup>

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<sup>35</sup> As we have seen, the bylaws currently require there to be 10 elected councillors, whereas the Act only requires eight. See also our recommendation at paragraph 3.34 above.

<sup>36</sup> Section 9(8).

<sup>37</sup> [www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2](http://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2)

- 3.61 In the meantime, EGBC has a code of conduct for councillors, and an associated procedure, *Implementation of Council's Code of Conduct*. The code of conduct sets out a number of expectations in relation to councillors' behaviour, as well as specific provisions about confidentiality and conflict of interests. Clearly, though, the absence of legal authority behind the code of conduct is likely to limit its effectiveness. For example, 'A Council member who is found guilty in a Discipline Hearing is expected to resign from Council'. However, if the councillor does not resign, there is no legal power to remove them from Council.
- 3.62 We also note that the code of conduct procedure provides for action to be taken on 'receipt of a second allegation of the same offence'. It makes no provision for taking action on single allegations of very serious offences, or numerous allegations about different types of misconduct.
- 3.63 Furthermore, we note from previous Council minutes that some councillors have declined to take the oath or affirmation of office, although the code of conduct says that this is expected of all councillors. We have not seen any evidence that councillors who do not take the oath of office are more likely to act improperly. Nevertheless an oath of office which is in practice optional cannot be said to add much by way of public protection.<sup>38</sup> It also demonstrates the limitations of a code of conduct which lacks a statutory basis for enforcement. Accordingly, we commend EGBC's efforts to amend the Act to introduce a power to remove councillors for misconduct; acquiring this power will improve its ability to be an effective regulator in the public interest. If the Act is amended, it will be appropriate for EGBC to review its code of conduct and associated procedure to ensure that these are robust, fair and transparent, and consistent with the powers in the Act.

### **Volunteers and committees**

- 3.64 Another consequence we noted of the dual mandate was that EGBC's members and licensees have a strong sense of investment in and ownership of the organisation and the professions. This was clear from the staff and councillors we spoke to, and the discussions we observed. In our view, this demonstrates that EGBC has been successful in engaging with members and licensees, and in securing their participation in its regulatory activities.
- 3.65 EGBC relies on volunteers in a variety of capacities to carry out its activities. Its latest annual report lists around 2,000 posts filled by volunteers in 2016/17. These included:
- Council
  - statutory and bylaw committees: the Investigation Committee; the Discipline Committee; the Registration Committee; the Nominating Committee; the Board of Examiners
  - local branches

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<sup>38</sup> Some other regulators in British Columbia have a mandatory oath of office for board members – see, for example, the Health Professions Act, available at: [www.bclaws.ca/civix/document/id/lc/statreg/96183\\_01#section17.11](http://www.bclaws.ca/civix/document/id/lc/statreg/96183_01#section17.11) [Accessed June 2018].

- registration interviewers
- practice reviewers
- mentors
- technical and advisory committees.

3.66 It will be seen that the roles filled by volunteers included both regulatory and representative functions. EGBC explained to us that it considers the involvement of registrant volunteers to be an important characteristic of professional self-regulation. EGBC's use of registrant volunteers gives it access to a broad range of professional knowledge and experience. It considers that the use of structured groups of registrant volunteers is a key means by which it demonstrates a commitment to working in a transparent and collaborative way. We also note that other professional regulators in Canada, including some with solely regulatory functions, rely on committees of registrant volunteers.

3.67 However, as we noted in our review of CRNBC, 'Statutory Committees do not, except in the matter of audit and risk committees, comply with modern practice in governance'. In that instance, we recommended that CRNBC review 'its statutory and special committee structure, with a focus on how decisions are made; the value that is added by each committee; and whether there are more cost-effective and efficient ways of achieving the intended outcomes within the current legislation'. We invite EGBC to consider the same points. There may be other, more efficient ways for it to perform some of the functions currently undertaken by committees. Nor do we consider that committees of registrant volunteers are inherently more transparent for the public than other ways of making decisions.<sup>39</sup> We recommend that EGBC review its use of committees, in particular to consider how effectively this promotes efficient and transparent decision-making.

3.68 We discuss elsewhere some other points about EGBC's use of committees, such as the involvement of councillors (paragraph 4.63), possible improvements to transparency (paragraph 4.46) and instances where committee working practices have developed to address the requirements of the Act rather than because they are in themselves desirable (paragraphs 3.98 to 3.99). We have also recommended that EGBC consider increasing the involvement of public members in its committees that consider complaints (paragraph 3.80).

### **Complaints and discipline**

3.69 The investigation of complaints is a vital element of a regulator's public protection remit. The Act gives EGBC a duty to consider complaints about members and licensees, including former members and licensees, and sets out the process it must follow. The process includes the option for complaints to be referred into the practice review process (see below).

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<sup>39</sup> Such as, for example, the application by staff of a published policy with facility for reconsideration where appropriate.

- 3.70 The Act also includes powers to investigate and take action in relation to unregistered practice. Suppressing unregistered practice fits both elements of the dual mandate: it protects the public and the interest of members and licensees. Accordingly, the powers in the Act are relatively strong, including a wide prohibition on holding out, and powers for injunctions (section 23) and exemplary damages (section 27). EGBC publishes information on its website about cases where it has taken action in relation to unregistered practice.
- 3.71 The Act requires EGBC to have an Investigation Committee and a Discipline Committee. The Investigation Committee's role is to investigate complaints. It also has the power to carry out an investigation without a complaint having been received; we understand that EGBC has exercised this power where it considered there was a public interest in doing so. The Discipline Committee forms panels<sup>40</sup> to hear cases (described in the Act as an 'inquiry'). It also has the power to impose interim suspensions or restrictions of practice pending a hearing, if it considers that a delay would be prejudicial to the public interest. This is an important tool for public protection, particularly as complaint investigations can take a long time in some circumstances.
- 3.72 The Act says that the Investigation and Discipline Committees should consist of at least five people. In practice, EGBC has recruited more members for each committee so that they are better able to cope with the workload. Each committee has nearly 20 members, and there is a standing advertisement for further members of either committee.
- 3.73 The Act provides that the Investigation Committee may contain one person who is not a member of EGBC; it requires that all members of the Discipline Committee must be members of EGBC. We consider that it would be beneficial to have greater involvement of the public in both committees. We recognise that it would be necessary to amend the Act in order to achieve this.
- 3.74 We noted that many of the complaints which proceeded to a published settlement had a significant technical dimension. It is necessary that committees and hearing panels are able to engage with the technical aspects of a complaint. But it does not follow that all the members of the committees must be practising members of EGBC. As long as panels and committees as a whole are able to take proper account of the relevant technical issues, for instance in determining whether a particular piece of work was carried out in accordance with appropriate professional standards, it does not matter whether the individual committee members would themselves be qualified or authorised to carry out similar work. We note that EGBC makes use of expert reports when necessary.
- 3.75 Furthermore, we consider that an external, public perspective would be helpful in ensuring that decisions in all cases take proper account of the public interest. In terms of the disposal of complaints by regulators, the public interest includes the protection of the public, the maintenance of public

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<sup>40</sup> Under the Act, panels must consist of 'at least three members of the Discipline Committee'; in practice, they consist of three.

confidence in the profession and its regulation, and the declaration and upholding of proper professional standards.

- 3.76 The Investigation Committee already includes one person who is not a member of EGBC. Their presence is not required and they were unable to attend the Investigation Committee we observed, so we could not assess what impact their contribution as a public member had on discussions. In any case, we consider that it would be potentially beneficial to the committee to have access to a range of external perspectives.<sup>41</sup>
- 3.77 The Discipline Committee forms three-person panels to hear cases. It is common practice among the health and care regulators we oversee for final hearings to be considered by three-person panels, consisting of professional and public members. We invite EGBC to consider whether a similar model would be appropriate for its Discipline Committee.
- 3.78 We have seen that EGBC has already implemented processes to promote the transparency of its handling of complaints within the existing framework. This includes maintaining separation between the Investigation and Discipline Committees, and between these committees and Council. We discuss some of the other ways in which EGBC seeks to promote the transparency of its complaints handling at paragraphs 4.41 to 4.43.
- 3.79 We also note that EGBC is seeking amendments to the Act in relation to its powers to investigate and resolve complaints. These include the ability to seek alternate dispute resolution earlier in the process, and powers for the Investigation Committee to impose temporary suspensions or conditions of practice. EGBC is also seeking a change to the Act in relation to what it describes as fitness to practise, referring 'to matters such as substance abuse, depression, and mental health issues which may affect one's professional judgment'.<sup>42</sup> It notes that under its current powers, 'intervention is essentially too late and solutions are confined to limiting or taking away a member's right to practise'.
- 3.80 We note that the amendments sought by EGBC to the Act aim to give it a wider range of powers to resolve complaints more effectively and to protect the public, including by seeking to prevent harm from occurring. We commend the changes already proposed to the Act in relation to complaints, and we recommend that EGBC review the options for increasing the involvement of public members in its Investigation and Discipline Committees.

### **Practice review**

- 3.81 Another way in which EGBC seeks to prevent harms from occurring is through its practice review process. The Act and the bylaws provide in general terms for the establishment of a practice review process and committee. The Act also specifies that members and licensees must

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<sup>41</sup> Having more public members would also make it less likely that a committee meeting would take place with no public member in attendance.

<sup>42</sup> Fitness to practise has a broader meaning in the UK regulatory context, where it refers to a professional's ability to practise safely without restriction; fitness to practise may be impaired by conduct, conviction, health or lack of competence.

cooperate with the process.<sup>43</sup> Practising members may be subject to a review, either as part of a regular sampling process or following a complaint.<sup>44</sup> Practice reviews are carried out by selected members, who review documents and visit the member's location of practice. Reports are then considered by the Practice Review Committee, which decides whether further intervention is necessary.

3.82 We understand that the development of the practice review process has enabled EGBC to intervene in cases where members' practice fell short of the required standard but was unlikely to meet the relatively high threshold for action through the complaints process. The practice review allowed for a targeted intervention to address the specific areas of the member's practice which were of concern.

3.83 We consider that the practice review process is an example of EGBC seeking to regulate in a proactive manner, to prevent harms from occurring. In this instance, the Act and bylaws give it powers to establish a practice review process but are not prescriptive about the form it should take, which makes it easier for EGBC to develop and maintain an appropriate process.

### Regulating organisations

3.84 EGBC has identified a significant omission from the Act in relation to organisations that carry out professional engineering or geoscience. The Act gives EGBC the power to issue a certificate of authorisation to such organisations.<sup>45</sup> However, the Act does not prevent organisations from operating without a certificate of authorisation; nor does it provide for a certificate to be renewed once it has been granted. We understand that in most other jurisdictions in Canada, both individuals and organisations carrying out professional engineering or geoscience must be regulated.

3.85 Staff told us that there are two fundamental influences on practice: the individual practitioner and the organisation they work for. At present, EGBC has powers to affect only one of these factors. This leads to some discrepancies. The Act and bylaws set a high bar for individuals to practise as professional engineers or geoscientists: there are requirements for qualifications, character and experience. There are no comparable requirements for organisations. Similarly, the Act refers to quality management processes and supervision; while EGBC has regulations about these for individuals, it has no legal power to enforce them at an organisational level. Staff told us that the ability to regulate corporate practice would dramatically increase EGBC's ability to meet its primary objective of public protection.

3.86 EGBC's view on the interconnection between individual and organisational practice is consistent with the position we outlined in our 2015 paper, *Rethinking regulation*, in which we outlined our thoughts on reform of regulation in the health and care sector in the UK. We observed that:

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<sup>43</sup> Section 44.

<sup>44</sup> A member can also request a practice review. EGBC's sampling accounts for about 95 per cent of practice reviews.

<sup>45</sup> Section 14.

'The evidence of the link between the behaviour and competence of people providing care and the contextual environment in which they do so is now compelling, both from human factors research, but increasingly now also in terms of human psychology. It seems strange to us therefore that people are regulated separately from the systems and places in which they work. [...] The places and systems within which people work need to support them to practise safely and professionally over the long term'.<sup>46</sup>

- 3.87 We have also commissioned recent research based on outcomes of disciplinary hearings, which discusses 'the complex and subtle interplay between individual professionals, teams, workplaces, gender and culture'.<sup>47</sup> Although these publications focused on the health and care sector, we are satisfied that similar considerations will arise for regulators in other sectors. We agree therefore that the addition to the Act of powers for EGBC to regulate organisations would strengthen its ability to protect the public, by addressing a gap in the current legislation. We commend EGBC's efforts to amend the Act to give it the power to regulate organisations.
- 3.88 EGBC established a task force to develop proposals for legal powers to regulate organisations. The report of the first phase of its activity recommended that EGBC should pursue legal powers to regulate organisations. The task force consulted members and other stakeholders. We also note that a large majority of respondents to EGBC's public survey said it was important for it to regulate firms carrying out professional engineering or geoscience. We understand that the task force is due to report to Council later this year with its recommendations for a regulatory model for corporate practice.
- 3.89 In the absence of legal powers to regulate organisations, EGBC has introduced a voluntary organisational quality management (OQM) programme. OQM seeks to promote good practice at the corporate level. OQM promotes alignment between individual and organisational quality management responsibilities and practices, thereby promoting efficiency. For example, EGBC members who are employed by organisations with OQM accreditation are exempted from the practice review sample, on the basis that the organisation will have appropriate measures in place.
- 3.90 At the time of writing, almost 300 organisations have obtained OQM accreditation, with others in the process of applying. We understand that this includes organisations based in other Canadian jurisdictions where corporate regulation is required. We were told that the OQM model provides a wider range of ways to influence corporate behaviour than is allowed for by most provincial legislation, which simply allows regulators to issue or withdraw

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<sup>46</sup> Professional Standards Authority (2015), *Rethinking regulation*. Available at: [www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/rethinking-regulation-2015.pdf?sfvrsn=edf77f20\\_14](http://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/rethinking-regulation-2015.pdf?sfvrsn=edf77f20_14) [Accessed May 2018].

<sup>47</sup> Searle, R, Rice, C, McConnell, A, and Dawson, J (2017), *Bad apples? Bad barrels? Or bad cellars? Antecedents and processes of professional misconduct in UK Health and Social Care: Insights into sexual misconduct and dishonesty*. Available at: [www.professionalstandards.org.uk/docs/default-source/publications/antecedent-amp-processes-of-professional-misconduct-in-uk-health-and-social-care.pdf?sfvrsn=1e087320\\_0](http://www.professionalstandards.org.uk/docs/default-source/publications/antecedent-amp-processes-of-professional-misconduct-in-uk-health-and-social-care.pdf?sfvrsn=1e087320_0) [Accessed May 2018].

authorisation. We understand that a pilot programme was carried out through Engineers Canada.

- 3.91 We consider that the OQM programme is another example of EGBC taking proactive steps to prevent harm from occurring, in this instance by working with organisations to promote good practice. We applaud this initiative; it is not, however, a substitute for the legal power to regulate firms. Voluntary schemes such as OQM and EGBC's voluntary CPD scheme are likely principally to attract firms and practitioners with an existing commitment to good practice, who may therefore be considered a lower risk to public protection.
- 3.92 We agree that it is important for public protection for EGBC to consider seeking the legal power to regulate organisations carrying out professional engineering or geoscience. We understand that the task force is considering how to integrate OQM into a model of corporate regulation. It is appropriate to try to learn from the strengths of OQM in developing a new regulatory framework. However, we would also advise EGBC to be alert to the possible unintended consequences of moving from a voluntary to a compulsory scheme. To develop a regulatory model that is consistent with the principles of right-touch regulation, EGBC will need to understand the risks of harm which it is seeking to address, in order to identify the appropriate regulatory response. We recommend that EGBC's task force take the principles of right-touch regulation into account in developing a model of corporate regulation.

#### **Other issues with the Act**

- 3.93 We have outlined in the preceding sections the most significant points where the Act has an impact on EGBC's ability to regulate in the public interest. Our review identified a number of other areas where the Act seems flawed or outdated.

#### **Outdated requirements**

- 3.94 As we have explained, the Act is based on legislation that is nearly a hundred years old. It contains some provisions which do not reflect up-to-date working practices. For example, it requires EGBC to send members notice of general meetings by prepaid post,<sup>48</sup> though the great majority of members now correspond with EGBC electronically. This requirement adds a cost burden to EGBC with no benefit to its regulatory effectiveness; it is one of the points of the Act which EGBC is seeking to amend.
- 3.95 Another example where the Act does not reflect up-to-date practice relates to EGBC's register. The Act requires EGBC to maintain a register of members and make it available for inspection during normal business hours.<sup>49</sup> It also requires EGBC to 'keep a record of licensees, certificate holders and members of each grade of membership', but does not say that this information must be made available to the public. In practice, EGBC maintains a directory of members and licensees, including members-in-training, on its website. The directory offers a variety of search functions and

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<sup>48</sup> Section 12(6).

<sup>49</sup> Section 19.

additional information, including, in the case of limited licensees, an electronic copy of the licence which specifies the areas in which they are authorised to practise. Where a registrant is subject to a sanction as a result of a complaint, their entry on the register includes a link to the details of the complaint outcome. So EGBC has gone beyond the requirements of the Act in order to publish information that is helpful to the public and to employers.

### *Working to the Act*

- 3.96 We saw some instances where the requirements of the Act obliged EGBC to develop specific measures which would not otherwise have been necessary. For example, we explained above how EGBC publishes information about its members online. However, it must still comply with section 19 of the Act. Staff told us that, if the situation were ever to arise, they would be able to print off a 'register' from EGBC's computerised records for a member of the public to inspect, so as to comply with the relevant duty under the Act.
- 3.97 There are other examples where EGBC has developed working practices to resolve difficulties caused by its legal framework. In these instances, EGBC is obliged to work to the terms of the Act, rather than being able to develop the most effective ways to protect the public interest. This does not promote efficiency or transparency.
- 3.98 For example, where there is no issue about an applicant's character or convictions, Council has delegated to the Registration Committee the power to make decisions about admission to the register. The Registration Committee is unable to sub-delegate its powers further. However, EGBC receives around 4,000 applications a year, most of which are straightforward, and it would be impractical and inefficient to consider every application at the meetings of the Registration Committee. Accordingly, under the Registration Committee's terms of reference, designated senior members of staff are included as members of the committee and are empowered to approve non-contentious applications (defined in an appendix to the terms of reference).
- 3.99 A similar situation arises in relation to EGBC's Investigation Committee. The Act requires complaints to be investigated by the Investigation Committee 'or a subcommittee composed of one or more of its members'. In practice, though, the workload of the committee is such that in order to ensure the timeliness and quality of reports, much of the work is undertaken by EGBC staff under the authority of the committee or subcommittee. But the committee or subcommittee must write or give specific guidance on the key opinion portion of any report, and must approve the reports before they are finalised. The need for direct involvement of the Investigation Committee or a subcommittee can add to the time it takes to complete an investigation.
- 3.100 We agree that it was appropriate for EGBC to develop working practices that allowed it to process applications and investigate complaints efficiently within the requirements of the Act. But if the legal framework supported EGBC to regulate efficiently, avoiding the use of committees for operational decisions, these expedients would not be necessary.

### *Right of appeal*

- 3.101 Our review also identified an apparent error in the Act. Section 39 of the Act gives a right of appeal against disciplinary sanctions or refusals of applications for registration. It says:
- ‘Any person [...] whose application for membership in the association, or for a licence has been refused under section 13(1)(d) or 13(2), may appeal the [...] refusal of the application to the Supreme Court within 42 days’.
- 3.102 However, there is no section 13(1)(d) in the Act. Section 13(1) contains only subsections (a) and (b). We understand that the reference here should be to section 13(1.1)(d), which sets out the requirement for applicants to satisfy EGBC that they are ‘of good character and good repute’. It appears that there is no right of appeal against refusals of registration on this basis in the Act as currently worded.
- 3.103 It is outside the scope of our review to assess the potential legal implications of this error in the legislation. Clearly, though, errors in its legislation do not help EGBC make regulatory decisions in a transparent and accountable way. We recommend that EGBC consider how to address the apparent error at section 39 of the Act.

## 4. Governance

- 4.1 We agreed a set of nine standards against which we assessed EGBC's performance in relation to governance. These standards covered key aspects of governance such as risk management, financial oversight and transparency, as well as an assessment of the effectiveness of the Council.
- 4.2 We concluded that EGBC is currently meeting seven of the nine standards. It has begun work to implement an effective risk management process, but this is at an early stage, and so we could not conclude that this standard was being met at present. Our conclusion about that standard is not a reflection on the work EGBC proposes to carry out. Further to our analysis in section 3 above, we could not conclude that EGBC's legislation gives it a framework to make decisions transparently in the public interest.
- 4.3 The rest of this section sets out in turn the standards we used to assess EGBC's performance, followed by an account of the evidence we considered and the finding we reached in relation to each one.

**Standard 1: the regulator has an effective process for identifying, assessing, escalating and managing risk, and this is communicated and reviewed on a regular basis by the Executive and Council**

- 4.4 Before our visit, EGBC explained to us that it is in the process of introducing a systematic approach to corporate risk management. Previously, there has not been a formal process in place to ensure that risks are identified and managed appropriately.
- 4.5 Formal responsibility for overseeing risk management has recently been added to the Audit Committee's terms of reference. In our experience, this is commonly one of the key responsibilities of an organisation's Audit Committee. The Audit Committee has standing support from EGBC's Chief Financial and Administration Officer, whose role also includes responsibility for risk management. These new arrangements are logical and consistent with what we would expect to see.
- 4.6 We observed a meeting of the Audit Committee which considered the development of a corporate risk register. The proposed risk register included the standard elements of a corporate risk register, including:
- identifying key risks and assigning them to categories
  - assessing the likelihood of each risk occurring and the impact should it occur, and assigning a risk score accordingly
  - identifying action to mitigate each risk
  - identifying the senior staff responsible for the action to mitigate each risk.
- 4.7 The risk register built on a workshop facilitated for EGBC by an external consultant around two years ago. The workshop report identified the top ten organisational risks. EGBC staff have since worked to develop the register, including by identifying some new top-level risks.

- 4.8 For one or two of the risks brought forward from the workshop, it was not clear how rigorously the underlying assumptions about likelihood and impact had been interrogated to ensure that they reflect EGBC's circumstances. Furthermore, the risk register has not yet been fully worked through to include lower-level risks. It is reasonable for EGBC to focus in the first instance on managing the biggest risks. However, it is not currently clear how it will identify and assess new risks, or existing risks which have increased in importance, to decide whether these need to be added to the risk register. The discussions we observed at the Audit Committee raised this issue, which gives us some assurance about its engagement with the risk register, but it was not clear that a solution was agreed upon. For example, some regulators have regular horizon-scanning reports to inform their Council of emerging issues which may translate into organisational risks. Such a model may not suit EGBC's needs, but it is important that it has a robust way to identify and bring forward potential risks for more detailed consideration.
- 4.9 We recommend that EGBC consider developing a means to ensure that decisions about how and when to engage its formal risk management process are made consistently and transparently. This might mean working through the risk register to include lower-level risks, which can then be escalated as necessary if circumstances change. Alternatively, it might mean developing, for example, criteria to decide how and when an evolving risk should be added to the top-level risk register.
- 4.10 Overall, though, the discussions at the Audit Committee demonstrated to us that councillors have an understanding of the purpose and importance of risk management. The Audit Committee includes both appointed and elected councillors. It is chaired by an appointed councillor who is a qualified accountant. In the discussions we observed, committee members drew on their varied professional experience of risk management in discussing the proposed register and suggesting areas for development.
- 4.11 We understand that the proposed approach to risk management includes provision for regular reports to the staff leadership team and Council. The risk register will be presented to Council; the leadership team will review the risk register at every meeting; and twice a year the Audit Committee will carry out a 'deep-dive review' of the register. We recommend that EGBC also consider clarifying how it expects its other operational and decision-making groups, such as task forces and committees, to have access to and take account of the risk register.
- 4.12 We recognise that work is in progress to introduce an effective process for risk management, including provision for oversight by Council. But the process is not yet in place, and so we have not seen evidence of its effectiveness. For that reason, we are unable to conclude that this standard is currently met. For the avoidance of doubt, our conclusion refers only to EGBC's current performance against this standard. We are not saying that the process EGBC is in the course of introducing will not be effective. We recommend that EGBC treat the introduction of a robust organisational risk management process as a matter of priority.

**Standard 2: the regulator has legislation, bylaws, policies and procedures that provide a framework within which decisions can be made transparently and in the interests of the public**

- 4.13 As explained in Section 3 above, we identified a number of issues arising from the Act and bylaws which impact on EGBC's ability to make decisions transparently and in the interests of the public.
- 4.14 We have seen that the requirement for members to ratify bylaws has prevented EGBC from introducing mandatory CPD, which it considers necessary in the public interest. In our view, the bylaw ratification requirement is a significant obstacle to EGBC's ability to regulate in the public interest. As we have outlined, there are also other provisions of the Act which appear to emphasise members' interests rather than focusing on the public interest.
- 4.15 There are some areas where the structures that have developed around the Act do not reflect up-to-date working practices.<sup>50</sup> One consequence of this is that EGBC has had to develop expedients to service the requirements of the Act. This does not promote transparency in decision-making. We have also identified several points where the transparency of decision-making could be improved by greater involvement of non-members; again, though, the Act as it currently stands does not permit this.
- 4.16 We discuss EGBC's approach to transparency at paragraphs 4.36 to 4.48 below. From the evidence we have seen, it is clear to us that EGBC staff and decision-makers are committed to working in the public interest. However, in relation to this standard, we concluded that the Act and the associated framework do not currently assist EGBC to make decisions transparently and in the public interest. Therefore this standard is not met. We have seen that EGBC is seeking to make changes to the Act to enhance its ability to be an effective regulator in the public interest. We commend the steps it is taking to strengthen and improve its legal framework.

**Standard 3: the regulator has effective controls relating to its financial performance, so that it can assure itself that it has the resources it needs to perform its statutory functions effectively, as well as a financial plan that takes into account future risks and developments**

- 4.17 We have seen that EGBC has arrangements in place for regular internal and external reporting of its financial performance. Every meeting of EGBC's Council receives a report on financial performance, including explanations of any major variances from the budget. The reports are also provided to the Audit Committee. EGBC's published Annual Report includes independently-audited financial statements. We understand that its most recent external audit raised no concerns.
- 4.18 EGBC has a suite of policies setting out principles for its financial controls. This includes an overall Sustainable Financial Management Policy, as well as

<sup>50</sup> For example, although the Board of Examiners is mentioned in the Act, the Registration Committee has a much larger role in the registration process than the Board of Examiners.

specific policies around investments and procurement. Council approves budget guidelines.

- 4.19 EGBC has three sets of reserves. Its general reserves contain around six months' operating expenditure, in line with the policy it established following a review it commissioned to ascertain the appropriate level of reserves. It has separate reserves specifically allocated for the maintenance of its property and equipment. EGBC also has a separate legal and insurance fund in reserve, to cover extraordinary legal or insurance costs. Appropriate funding levels for each set of reserves are reviewed each year as part of the budgeting process.
- 4.20 EGBC has a process in place for financial planning and budget-setting. It sets out budget plans for approval on a three-year cycle, aligned with its strategic plan, so that Council, in approving the budget for the first year of the cycle, also notes a pro forma budget for the following years. In line with this approach, the Council meeting we observed discussed and approved the budget for 2018/19 (the second year of its 2017-20 strategic plan) and noted an outline budget for 2019/20. This approach means that Council has oversight of the resources required to deliver the strategic plan throughout its life. It also helps EGBC to plan financially for projects which are scheduled to take more than a year to complete. We consider that aligning financial and strategic planning in this way is an example of good practice.
- 4.21 The draft budget was prepared by staff and approved by the Executive Committee for submission to Council. The submission to Council included a summary of the budget guidelines, confirming that these had been applied and explaining where specific objectives of the guidelines had not been achieved. There was a detailed discussion at Council which indicated that councillors had a sufficient understanding of the financial issues to make an informed decision about approving the budget.
- 4.22 We saw that Council's consideration of the proposed budget for 2018/19 included discussion of future risks and developments. These included cost implications of EGBC's business plan priorities and matters outside its control, such as changes in the provincial taxation regime which would affect EGBC's costs. We noted that both appointed and elected councillors emphasised the importance of prudent financial management to enable EGBC to fulfil its public protection mandate.
- 4.23 As noted in section 3 above, EGBC's Council acquired the power to set the annual registration fee for members in 2008 as a result of a change in the Act.<sup>51</sup> We understand that this followed several unsuccessful attempts to increase the registration fee through ballots to amend the relevant bylaw. It is clear from the discussions we saw at Council that this change in the Act was a significant step towards giving EGBC effective control over its finances. When it was unable to set the registration fee, EGBC had to increase its other, ancillary fees in order to ensure that it had adequate resources. This meant that the funding of its core regulatory activities was dependent on

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<sup>51</sup> A resolution approved by 2/3 of Council members is required. Previously, the power to set the registration fee was contained in the bylaws, and so changing the registration fee required the assent of 2/3 of members in a ballot.

subsidies from elsewhere in the organisation. The ability to set the registration fee as part of the budgeting process is a more transparent and effective way for EGBC to plan and resource its regulatory activities.

4.24 We conclude that this standard is met.

#### **Standard 4: the Council sets strategic objectives for the organisation**

4.25 EGBC has a strategic plan, which is renewed on a three-year cycle. The current strategic plan covers 2017-20. It was developed and approved by Council in 2016. Council discussed and agreed strategic priorities, and then charged staff with developing a framework for the plan based on those priorities. The framework, which sets out the organisation's goals and supporting outcomes, was then reviewed and approved by Council, following which work plans and associated performance indicators were developed.

4.26 The strategic plan defines EGBC's mission as: 'To serve the public interest as a progressive regulator that supports and promotes the engineering and geoscience professions'. It sets out three goals:

- goal 1: to uphold and protect the public interest through the regulation of the professions
- goal 2: to establish, maintain and enforce qualifications and professional standards
- goal 3: to promote and protect the professions of engineering and geoscience (subject to goals 1 and 2).

4.27 It will be seen that these goals are closely aligned to the duties and objects of EGBC as defined in the Act (see paragraph 3.10, above). Underneath each of these goals, the plan sets out a number of outcomes which EGBC seeks to achieve, with associated strategies and key progress indicators.

4.28 There are measures in place to ensure that the strategic plan is embedded into EGBC's work. We saw that papers to Council identify how the proposal concerned relates to the strategic plan. All Council members are given a copy of the strategic plan to refer to at each Council meeting. The Council 'road map', which sets out in summary the schedule of planned activities for the year under each of the strategies in the plan, is presented to each Council meeting for information. We understand that committee and department workplans are also required to be linked back to the strategic plan. Reporting against the strategic plan features prominently in EGBC's Annual Reports.

4.29 Council also has the ability to set the strategic direction of the organisation by establishing task forces to address specific issues. Task forces operating under the current strategic plan include the Advisory Task Force on Corporate Practice and the Nomination and Election Review Task Force. There is also a 30 by 30 Champions Group.<sup>52</sup>

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<sup>52</sup> 30 by 30 is an initiative set up by Engineers Canada to increase the representation of women in engineering. Its goal is for the proportion of newly-licensed engineers who are women to reach 30 per cent by 2030.

- 4.30 We conclude that this Standard is met. As outlined in section 3, we have identified some risks to Council's ability to oversee the organisation's strategic direction arising from the regular turnover of Council members. Five councillors who were serving when the strategic plan was developed in 2016 are still members of Council at the time of writing; next year there will be fewer. However, the evidence we have seen indicates that Council sets and retains responsibility for EGBC's strategic objectives.

**Standard 5: the regulator's performance and outcomes for the public are used by the Council when reviewing the strategic objectives of the organisation**

- 4.31 We described EGBC's current strategic plan in relation to the previous standard. As set out at paragraph 4.26, the plan emphasises that public protection is EGBC's principal duty. The first two of the three goals in the plan bear directly on public protection. The plan identifies key progress indicators to help Council understand EGBC's performance. We have seen that Council receives regular reports on the key progress indicators.
- 4.32 In our view, there is scope for greater emphasis on outcomes for the public in the key progress indicators that support the strategic plan. For example, one of the outcomes EGBC has identified to help it uphold and protect the public interest is to modernise the Act. The key progress indicator towards this outcome is that 'A legislative renewal plan is formulated, approved and implemented that has stakeholder support'. We acknowledge that a benefit to public protection is implicit in the plan to modernise the Act, and that the public are stakeholders in this plan. But in our view it would be helpful to make clear in the key progress indicator that the purpose of modernising the Act is to enhance public protection and there is a public interest in the formulation of the plan. We recommend that EGBC consider ways to enhance the focus on outcomes for the public in the key progress indicators supporting its strategic plan.
- 4.33 We understand that Council is due to review EGBC's progress against the 2017-20 strategic plan at a forum in June 2018. As at the time of compiling this report we did not have information available about the review of the current strategic plan, we considered the available evidence about how Council approached the review of the previous strategic plan.
- 4.34 We noted that as part of a review of the last strategic plan, in September 2015, Council considered detailed information about EGBC's progress against a range of performance indicators. These included milestones for the strategic plan as well as performance indicators underpinning achievement of the high-level goals in the plan. The performance indicators included public-focused outcomes, for example in relation to completing complaint investigations. Other measures related to public protection, though they did not identify specific outcomes for the public. These included targets for developing practice guidelines, increasing use of EGBC's professional practice and ethics guidelines and its risk management tools and programmes. We understand that as a result of the review of EGBC's

performance in September 2015, Council adjusted some of the targets for the following year of the plan.

- 4.35 We are satisfied that there is evidence of Council using information about EGBC's performance, including outcomes for the public, in reviewing its strategic objectives. We have seen that EGBC continues to provide performance data to Council, and that a formal review by Council of the current strategic plan has been scheduled. Accordingly, we conclude that this standard is met.

#### **Standard 6: the regulator demonstrates commitment to transparency in the way it conducts and reports on its business**

- 4.36 Our findings about the legal framework within which EGBC works are also relevant to this standard. As we described above, the limitations of the Act and associated structures do not assist EGBC in making decisions transparently.
- 4.37 EGBC publishes a wide range of information about its work through its website. This includes:
- the Act, bylaws and Code of Ethics
  - current and past strategic plans
  - current initiatives and consultations
  - disciplinary investigation outcomes
  - information about examinations, including past papers
  - information about applications for registration
  - budget and financial policies
  - a wide range of practice resources, including professional and ethical guidance, quality management guidelines and details of its Organisational Quality Management programme.
- 4.38 As noted above, EGBC publishes an Annual Report, which contains details of its performance against the strategic plan and externally-audited financial statements, as well as detailed information about initiatives during the year. The Annual Report also lists the volunteers who have participated during the year in each of EGBC's branches, committees, divisions, and other groups.
- 4.39 EGBC's Council meetings are open to the public. Dates and locations for Council meetings and Annual General Meetings are published well in advance. Papers submitted to the open session of Council are published on the website ahead of the meeting in question, and remain publicly available through the website. EGBC has developed criteria to determine whether an agenda item should be considered in the closed session; the default position is that items will be considered in open session. The website also includes minutes and summaries of past Council meetings.
- 4.40 While the papers submitted to Council meetings are publicly available and provide a detailed background to the issues under consideration, the minutes of Council meetings simply record the motions that were debated and their

outcomes. There is no summary of any discussions about the motion. We appreciate that Council makes decisions corporately, and it is not the purpose of the minutes to be a full record of everything discussed at the meeting. However, the Council meeting we observed included some detailed debates, the substance of which would not be captured by simply recording the outcome of the motion debated. In our view, recording in the minutes the substance of the discussion and Council's conclusion could promote greater transparency in decision-making. We recommend that EGBC consider whether enhancing the information recorded in Council minutes would help the transparency of its decision-making.

- 4.41 It was clear from our discussions with staff that they are aware of the importance of EGBC acting in a transparent way. We heard numerous instances of the organisation deciding proactively to publish information where the Act was silent or unclear about this. For example, the Act does not say anything about publishing the outcomes of complaints. EGBC publishes disciplinary outcomes and holds hearings in public as a matter of policy. In doing so, it has regard to a 1999 investigation report by the Information and Privacy Commissioner of British Columbia, which found that a regulator had authority to disclose information about disciplinary outcomes, because doing so was consistent with its regulatory purpose.<sup>53</sup> But in the absence of clear authority in the Act, EGBC's interpretation of its mandate to publish disciplinary outcomes remains subject to challenge.
- 4.42 EGBC often seeks to resolve complaint investigations by mediated settlements. It routinely makes publication a condition of the settlement. Its website includes a list of settled cases, each with details of the agreed findings and sanctions. Where cases are settled by consent between the regulator and the registrant, it is important that appropriate information is available to the public and employers so that they can understand how the registrant's practice or conduct fell short of the required standards, and what action has been taken as a result. We consider that this is vital to uphold public confidence in the regulator and the profession.
- 4.43 We understand that EGBC publishes anonymised information about cases which are not upheld, to promote learning. We also saw that in a group of complaint investigations where there was significant public interest, EGBC agreed with the registrants concerned that it would publish a statement about the outcome, even though the complaints were dismissed at an early stage, which would usually mean that no identifiable information about them was published.
- 4.44 We noted at paragraph 3.95 above that EGBC has gone beyond the requirements of the Act to publish information about registrants in a transparent and accessible way. EGBC's website contains detailed information for potential applicants. We also noted that EGBC took additional steps to ensure a transparent approach to its budgeting process for 2017/18:

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<sup>53</sup> Information and Privacy Commissioner of British Columbia (1999), *An investigation into the disclosure of personal information concerning discipline matters by the British Columbia College of Teachers*, available at: [www.oipc.bc.ca/investigation-reports/1260](http://www.oipc.bc.ca/investigation-reports/1260).

as well as publishing its budget and associated policies on its website, it hosted a webinar to give an overview of the budget.

- 4.45 Generally, we are satisfied that EGBC demonstrates a commitment to transparency in conducting and reporting on its business. EGBC has taken steps to put a significant amount of information about its activities in the public domain.
- 4.46 As we have noted elsewhere, EGBC relies on committees of councillors and other volunteers to carry out many of its regulatory functions. Generally, information about committees is less easily accessible than information about other aspects of EGBC's work. This may be in part because it does not seem to be published in a consistent way. EGBC's website publishes a list of the committees with a basic description of their role, and, separately, the Annual Report publishes a list of all committee members. Similarly, the terms of reference for some committees can be found in different parts of EGBC's website: where updated terms of reference have been submitted to Council for approval, they appear in the Council papers; where committees are advertising for new members, the terms of reference are sometimes accessible as part of the advertisement. We understand that each committee has a workplan, but these do not appear to be published. We recommend that EGBC consider whether it could publish information about the remit and work of its committees in a more accessible and transparent way.
- 4.47 Similarly, from our observation of committee discussions, it was clear that that members had thoroughly considered the background materials provided ahead of the meeting. We saw discussions that varied in depth according to the nature of the case and the evidence available. We acknowledge that the discursive format of a committee discussion can be a strength, in that it draws out and examines different points of view about the evidence. However, we noted some occasions where it was not clear that a committee had a shared understanding of the decision to be made and the test to be applied. The transparency of committee decisions could be enhanced if there was a stronger emphasis on the statutory decision the committee is required to make. We recommend that EGBC review the standard documents it provides to its decision-making committees, and the training and support it provides to members of these committees, to determine whether it could update or develop them to promote greater transparency in committee decision-making.
- 4.48 Overall, we conclude that this standard is met. EGBC has demonstrated that it is committed to acting transparently within the limitations of the Act and the associated structures. We consider that updates to the underlying legal structures could enable EGBC to be more transparent still. We have made a number of recommendations for steps EGBC could take to promote transparency.

#### **Standard 7: the regulator engages effectively with the public**

- 4.49 EGBC has a duty under the Act to uphold and protect the public interest in relation to professional engineering and geoscience. It is important, therefore, for EGBC to engage with the public. However, there are some inherent

challenges associated with the nature of the relationship between the public and the engineering and geoscience professions.

- 4.50 Engineers and geoscientists may be involved in projects which affect the public in a number of ways. This includes large-scale public infrastructure projects and resource extraction in remote areas of the province as well as domestic projects for homeowner clients. There will be many circumstances in which members of the public are affected by the work of engineers and geoscientists without them having any direct contact with the professionals involved. Consequently, part of EGBC's challenge in engaging effectively with the public is to gauge what level of public engagement is desirable and attainable.
- 4.51 EGBC carries out a regular public opinion survey, to gain insight into public awareness and understanding of engineering and geoscience, and public expectations and priorities for their regulation. In the most recent survey, in 2017, the majority of respondents agreed that engineers and geoscientists should be regulated. The survey results also indicated that EGBC's strategic plan reflected the public's priorities for the regulation of the professions.<sup>54</sup>
- 4.52 EGBC conducts regular outreach activity at schools and universities. This includes activities targeting girls, as part of the 30 by 30 initiative.<sup>55</sup> It also promotes a range of activities in March each year as part of National Engineering and Geoscience Month: in 2018, it ran engineering-themed competitions for children and families, including partnerships with government and other institutions in the province.
- 4.53 In August 2017, EGBC launched a new brand. A key part of this was the introduction of the business name 'Engineers and Geoscientists BC' in place of the acronym by which the organisation was formerly known, APEGBC. We understand that EGBC identified concerns that the acronym 'led to low recognition amongst the public and stakeholders'. Moreover, the full name (the Association of Professional Engineers and Geoscientists of the Province of British Columbia) did not clearly convey EGBC's role as a regulator rather than a 'private club' for professionals.<sup>56</sup> The new brand also features a new logo and graphics, which are used consistently throughout EGBC publications. The public, professionals and other stakeholders were consulted as part of the rebranding.
- 4.54 In support of its rebranding, EGBC undertook an advertising campaign to raise public awareness of the organisation and brand. The advertisements concentrated on EGBC's role in public protection. Although we were on site in Vancouver for only a few days, some months after the launch of the new brand, we saw some evidence of this advertising campaign. Following the

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<sup>54</sup> Most respondents described it as 'very important' that EGBC should do the following: develop guidelines and standards of practice for members; investigate complaints and discipline members where appropriate; assess qualifications of those who apply for membership; regulate firms carrying out engineering and geoscience; and audit members' practice to assess compliance with rules and standards.

<sup>55</sup> See footnote 52, above.

<sup>56</sup> EGBC (2017), *Brand FAQ*. Available at: [www.egbc.ca/About/Our-Brand/Brand-FAQ](http://www.egbc.ca/About/Our-Brand/Brand-FAQ) [Accessed May 2018].

rebranding, EGBC plans to carry out its public survey every year, rather than every three years as previously.

- 4.55 There is already some evidence that public engagement with EGBC is increasing. An increase in the number of complaints received may suggest that more people are aware of EGBC and its regulatory role. Over the last three years, EGBC has handled an average of around 70 complaints about members per year. This is a significant increase: in the four years from 2008/09 to 2011/12, EGBC received about 30 complaints a year about members. Similarly, this year EGBC reports an increase in investigations into unauthorised practice, with complaints from the public identified as a factor in the increase.
- 4.56 As we have discussed elsewhere in this report, we consider that there is scope for greater involvement of non-members in EGBC's Council and committees, subject to relevant updates to the Act. Nevertheless, we recognise that there are already measures in place to ensure a public perspective at these levels. The Act requires four councillors to be public appointees. In addition, the terms of reference of some of EGBC's statutory committees require that they include appointed councillors, for example:
- the Executive Committee must include an appointed councillor
  - the Audit Committee must include at least two appointed councillors.
- 4.57 However, we note that the Governance Committee's terms of reference do not require that it should include an appointed councillor. Given that the role of the Governance Committee is to develop and bring to Council recommendations about effective governance principles and policies, we think it is important that the committee includes a public appointee. We acknowledge that the Governance Committee as currently constituted includes an appointed councillor with relevant experience. We recommend that EGBC consider reviewing the Governance Committee's terms of reference so that they require the inclusion of at least one appointed councillor on the committee.
- 4.58 We conclude that this standard is met. EGBC has a strategy in place to engage the public, and there is evidence that it is actively pursuing that objective. In particular, EGBC's rebranding demonstrates its willingness to invest time and resources in order to engage the public more effectively. As we have seen, its engagement strategy also takes account of its dual mandate.

#### **Standard 8: the Council has effective oversight of the work of the Executive**

- 4.59 We gathered evidence about several ways in which Council oversees the work of EGBC staff. We observed Council and committee meetings during our site visit in April 2018. We also listened to an audio recording of the February Council meeting, and reviewed published information about several recent Council meetings. We individually interviewed the President and three other councillors, as well as the Registrar and other senior EGBC staff.

- 4.60 We saw that Council receives regular performance and financial reports from the Executive. There is also a higher-level Council ‘road map’, which gives an overview of expected progress against the strategic plan. The information provided to Council appears appropriate to enable it to assess the organisation’s performance.
- 4.61 The councillors we spoke to said they believed the information they received for Council meetings was of a good standard: although there is often a lot of material to cover, it is generally well-structured and councillors considered that performance reporting was appropriate. Councillors told us they seek further information and clarification from staff where necessary, and find them responsive to such enquiries.
- 4.62 Councillors also serve on EGBC’s committees and task forces.<sup>57</sup> The Audit Committee, Executive Committee and Governance Committee have specific responsibilities in relation to Council and consist exclusively of councillors.<sup>58</sup> Councillors told us that the committee structure allowed opportunities to oversee developing work from different perspectives. But councillors also serve on more operational committees and task forces, including the Registration Committee, which makes decisions about applications to the register. This means that they have contact with work in progress, and when a motion is presented to Council for consideration and approval, there are often councillors who are already familiar with the background.
- 4.63 However, we consider that the involvement of councillors in operational committees and task forces risks blurring the distinction between the respective responsibilities of Council and staff. A Council’s role is to provide strategic leadership for the organisation and to hold the Executive to account for its delivery, not to participate in operational matters. It was not clear to us whether councillors serving on committees and task forces are expected to oversee the work of staff or simply take part in it: the terms of reference we have seen do not distinguish between the roles of councillors and other members of a committee. Where a councillor has been involved in the development of a proposal for Council’s approval, there may be potential for the appearance of a conflict of interests arising from their involvement in two capacities. We recommend that EGBC review the involvement of councillors in operational committees and task forces.
- 4.64 We saw that councillors challenged the Executive and sought clarification at both Council and committee discussions; as noted above, this included detailed discussions about the financial issues around EGBC’s budget planning. Most of the contributions we observed from councillors indicated that they had engaged with the material provided in advance of meetings. We noted that councillors drew on their professional experience in addressing the matters under consideration.
- 4.65 Council also has direct oversight of the Chief Executive. There is a formal process in place, approved and managed by the Executive Committee, for

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<sup>57</sup> The terms of reference of the Investigation Committee and the Discipline Committee specify that no councillor may serve on them. This is to maintain separation between the investigation and resolution of complaints and the strategic leadership of the organisation.

<sup>58</sup> Although the Chief Executive is an *ex officio* non-voting member of Executive Committee.

reviewing the Chief Executive's performance. The President told us that she speaks with the Chief Executive weekly, and as needed in relation to any emerging issues.

- 4.66 We conclude that this standard is met. There are processes in place for Council to oversee the work of EGBC staff, although in some respects the committee structure lacks clarity about roles, as set out in paragraph 4.63. Nevertheless, we saw evidence that in practice Council takes its responsibilities seriously and is able to provide constructive challenge to the Executive.

**Standard 9: the Council works effectively, with an appropriate understanding of its role as a governing body and members' individual responsibilities**

- 4.67 As discussed in relation to the previous standard, the evidence we saw at Council and committee meetings indicated that Council is able to oversee the work of the organisation, and that it provides constructive challenge to the Executive. The Council meeting was chaired by the President, who sought to elicit contributions from all councillors and to keep discussions focused on the items for decision.
- 4.68 We considered whether the structure and format of Council meetings helps it to work effectively. A day or so before each Council meeting, there is an optional teleconference to which all councillors are invited. This provides an opportunity to ask questions or seek clarification about any of the items on the agenda. Councillors told us that they find the pre-meeting teleconference helpful in focusing discussions at the Council meeting itself. We noted that most councillors attended the teleconference we observed. Councillors identified queries about the information in the meeting papers and staff were tasked with providing clarification. Addressing these matters at the pre-meeting meant that Council had the required information to hand for consideration at the full meeting.
- 4.69 The agenda for each Council meeting includes a consent agenda: a group of items requiring Council approval but not proposed to be discussed. Council votes to approve the entire consent agenda in a single motion. Council approval is required for a wide range of decisions, including routine (re)appointments to posts on committees and external boards, and reviews of terms of reference. The last three Council meetings had an average of nine motions and 11 information items on each consent agenda. Discussing all those motions, even briefly, would likely have had an impact on Council's ability to complete all necessary business at each meeting.
- 4.70 It is appropriate for EGBC to have a means for expediting Council approval of matters that are not contentious, and the consent agenda has safeguards built in. An item will be removed from the consent agenda and discussed as part of the regular agenda at the request of any councillor. A request can be made at the pre-meeting teleconference or at the Council meeting itself. However, we did not see a policy setting out how to decide whether an item should be proposed for approval under the consent agenda. While Council should be free to remove items from the consent agenda at its discretion, we

consider that it would be helpful to have guidelines for staff about the criteria likely to make an item suitable for the consent agenda. We recommend that EGBC consider developing such guidance.

- 4.71 Discussions at Council meetings are based around the consideration of motions. A motion is moved and seconded, and then voted on after any discussions (which may include amendments to the motion). We have commented on this approach to Council discussions in previous reports, as we have found that it does not always encourage an open and enquiring approach.<sup>59</sup> However, on the whole, we considered that EGBC's Council engaged in open and enquiring discussions of the matters before it. These discussions included emphasis on EGBC's duty to protect the public.
- 4.72 We noted, though, that this meeting format obliged Council to spend time discussing technicalities about motions, such as whether a particular motion required amendment, and whether a suggested amendment could be accepted as a 'friendly amendment' or whether it required Council to vote on a proposal to amend the original motion. The potential complexity of these meetings is illustrated by the fact that there is a member of staff designated to act as the parliamentarian, that is, an expert on matters of procedure.
- 4.73 It remains our view that voting on motions is an inappropriate form of organisational governance for a regulator. In our experience, modern practice in governance favours a board-like management structure. Decision-making in such structures usually proceeds by discussion and agreement on a course of action.
- 4.74 We also question whether the current meeting format makes the most effective use of Council's time. We recognise that it is necessary to have an agreed format for Council discussions, and to make clear what decision Council is being asked to reach. But the format of the meeting should serve Council's discussions, not the other way around. As set out in our recommendation at paragraph 4.40 above, we also consider that the minutes of Council meetings could contain a more transparent account of its decisions than a simple record of the motions debated and carried. We recommend that EGBC consider whether an alternative format for Council meetings might help it make decisions more efficiently and transparently.
- 4.75 We noted that EGBC makes appropriate use of technology to facilitate Council and committee meetings. Use of remote conference facilities is widespread, as one might expect: British Columbia covers a total area of nearly 950,000 square kilometres,<sup>60</sup> and some councillors live far from EGBC's offices. EGBC uses a secure area of its website to provide documentation to councillors ahead of meetings. At the Council meeting, councillors used individual microphones to ensure that their contributions were clearly audible for the audio recording and those attending remotely. There was an electronic system for queuing councillors' contributions and recording their votes on each motion.

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<sup>59</sup> See, for example, our report on CRNBC, referenced at footnote 3 above.

<sup>60</sup> Statistics Canada (2005), *Land and freshwater area, by province and territory*. Available at: [www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/phys01-eng.htm](http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/phys01-eng.htm) [Accessed May 2018].

- 4.76 We observed that councillors' degree of engagement varied. Overall, though, we considered that councillors demonstrated an understanding of their role and responsibilities. As noted above, discussions at Council emphasised EGBC's primary duty to protect the public.
- 4.77 We outlined in section 3 above some of the issues arising from the Act in relation to the composition and tenure of Council. In particular, we consider that there could be benefits from greater involvement of public appointees. However, the evidence we have seen shows that Council does understand its role in providing strategic leadership for EGBC, and that councillors work individually and collectively to fulfil that role effectively. Accordingly, we conclude that this standard is met.

## 5. Conclusion and recommendations

- 5.1 We have reviewed EGBC's legislative framework and assessed its governance arrangements. It met seven of the nine governance standards against which we assessed it. The two standards EGBC did not meet relate to risk management and the extent to which its legal framework enables it to make decisions transparently and in the public interest. EGBC has begun work to implement an effective organisational risk management process, but this work is not yet complete. From the evidence we have seen, we are satisfied that EGBC is committed to regulating the engineering and geoscience professions in the public interest; however, there is still some way to go before its legal framework fully supports it in doing so.
- 5.2 We have seen that EGBC is already working to secure improvements to its legal framework which will enhance its ability to regulate the professions effectively. We commend the work it is doing to introduce additional legal powers to help it protect the public (paragraph 3.17). In particular:
- We commend EGBC's efforts to introduce a mandatory CPD programme. Such programmes are widely recognised as good practice in regulation (paragraph 3.24)
  - We commend the steps EGBC is taking to unfetter its ability to make and amend bylaws in the public interest, by amending the requirement in the Act for bylaws to be ratified by members (paragraph 3.25)
  - We commend EGBC's review of election and nomination processes, and we encourage it to prioritise measures which will assist Council in providing effective strategic leadership for the organisation (paragraph 3.45)
  - We commend EGBC's efforts to introduce powers to remove Council members for misconduct (paragraph 3.63)
  - We commend the changes EGBC has proposed to the Act in relation to complaints (paragraph 3.80)
  - We commend EGBC's efforts to amend the Act to give it the power to regulate organisations. The absence of a power to regulate organisations is a significant gap in EGBC's ability to protect the public (paragraph 3.87).
- 5.3 We have also made a number of recommendations to EGBC to help it regulate more effectively and transparently in the public interest.
- 5.4 We *recommend* that EGBC consider seeking amendments to the Act to simplify its powers to make and amend bylaws (paragraph 3.19).
- 5.5 We *recommend* that EGBC review the size of Council to promote its ability to carry out its functions effectively (paragraph 3.34).
- 5.6 We *recommend* that EGBC review the options for achieving a more appropriate balance between ensuring Council's ability to lead the organisation and enabling members' participation (paragraph 3.43).

- 5.7 We *recommend* that EGBC consider ways to promote continuity of strategic leadership. We acknowledge that the existing framework of the Act and bylaws poses a number of challenges in relation to the President's role. We invite EGBC to prioritise the effective performance of those elements of the President's role which bear on its regulatory duties (paragraph 3.52).
- 5.8 We *recommend* that EGBC review the options for increasing the proportion of appointed councillors, including, for example, how many appointed councillors would be optimal and whether it would be appropriate to reduce the number of elected councillors at the same time. This review should enable it to decide whether and how to proceed in seeking relevant amendments to the Act (paragraph 3.59).
- 5.9 We *recommend* that EGBC review its use of committees, in particular to consider how effectively this promotes efficient and transparent decision-making (paragraph 3.67).
- 5.10 We *recommend* that EGBC review the options for increasing the involvement of public members in its Investigation and Discipline Committees (paragraph 3.80).
- 5.11 We *recommend* that EGBC's task force take the principles of right-touch regulation into account in developing a model of corporate regulation (paragraph 3.92).
- 5.12 We *recommend* that EGBC consider how to address the apparent error at section 39 of the Act (paragraph 3.103).
- 5.13 We *recommend* that EGBC consider developing a means to ensure that decisions about how and when to engage its formal risk management process are made consistently and transparently (paragraph 4.9).
- 5.14 We *recommend* that EGBC consider clarifying how it expects its operational and decision-making groups, such as task forces and committees, to have access to and take account of the risk register (paragraph 4.11).
- 5.15 We *recommend* that EGBC treat the introduction of a robust organisational risk management process as a matter of priority (paragraph 4.12).
- 5.16 We *recommend* that EGBC consider ways to enhance the focus on outcomes for the public in the key progress indicators supporting its strategic plan (paragraph 4.32).
- 5.17 We *recommend* that EGBC consider whether enhancing the information recorded in Council minutes would help the transparency of its decision-making (paragraph 4.40).
- 5.18 We *recommend* that EGBC consider whether it could publish information about the remit and work of its committees in a more accessible and transparent way (paragraph 4.46).
- 5.19 We *recommend* that EGBC review the standard documents it provides to its decision-making committees, and the training and support it provides to members of these committees, to determine whether it could update or develop them to promote greater transparency in committee decision-making (paragraph 4.47).

- 5.20 We *recommend* that EGBC consider reviewing the Governance Committee's terms of reference so that they require the inclusion of an appointed councillor on the committee (paragraph 4.57).
- 5.21 We *recommend* that EGBC review the involvement of councillors in operational committees and task forces (paragraph 4.63).
- 5.22 We *recommend* that EGBC consider developing guidance about the criteria likely to make an item suitable for the consent agenda (paragraph 4.70).
- 5.23 We *recommend* that EGBC consider whether an alternative format for Council meetings might help it make decisions more efficiently and transparently (paragraph 4.74).

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